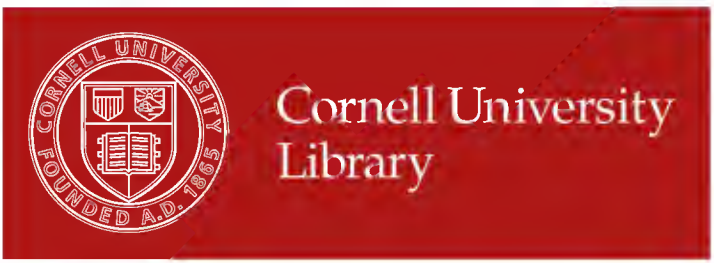

DIVORCE BILLS

IN THE

IMPERIAL PARLIAMENT

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BY

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TO THE

RIGHT HONOURABLE

THE EARL OF HALSBURY

THIS BOOK IS

BY HIS LORDSHIP'S KIND PERMISSION

RESPECTFULLY DEDICATED.

PREFACE.

The Matrimonial Causes Act, 1857, which established a Divorce Court for England, has no operation in Ireland. It has nevertheless substantially altered the point of view from which Irish Divorce Bills are regarded by Parliament, and it therefore appeared to me that it would be useful to complete and publish a collection of precedents which I had occasion from time to time to bring together.

The sources from which the following pages are compiled are the Journals of both Houses of the Imperial and Irish Parliaments, Divorce Acts passed during the last eighty years, and reports of evidence and cases contained in the Sessional papers and elsewhere. The abstracts of cases given at pp. 74-103 have been compared with the original transcripts of evidence. For the opportunity of making the comparison I am indebted to the courtesy of the Clerk of the Parliaments in whose custody the transcripts are preserved, and especially to Mr. Cecil Lloyd Anstruther, the Clerk attending the Table, and to Mr. Ambrey Court, both Officers in the Department.

For information concerning the work and duties of an agent for a Divorce Bill I am indebted to Messrs. Mills, Lockyer & Mills.

James Roberts.

1 Paper Buildings, Temple, London, E.C.,
January, 1906.

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ABBREVIATIONS.

A. C., or App. Ca.	Law Reports Appeal Cases.
Cl. & Fin.	Clerk and Finnelly's House of Lords Cases.
E. & I. App.	English and Irish Appeal Cases.
H. C. J.	House of Commons Journals.
H. L. J.	House of Lords Journals.
H. L. J. App.	Appendix to House of Lords Journals.
H. L. Ca.	House of Lords Cases.
Hag.	Haggard's Reports.
Hag. Con.	Haggard's Consistory Reports.
I. R. Ch.	Irish Reports, Chancery.
Ir.	Irish.
L. J. P.	Law Journal Reports, Probate.
L. R.	Law Reports.
Macq.	Macqueen's Appellate Jurisdiction of the House of Lords, &c.
Macq. R.	Macqueen's Reports, House of Lords.
P. D.	Reports of Cases in Probate Division (Eng.), 1876, &c.
1900, &c., P.	Reports of Cases in Probate Division (Eng.), 1900, &c.
S. O.	Standing Order.
Salk.	Salkeld's Reports.

DIVORCE BILLS.

CHAPTER I.

The Nature of the Jurisdiction.

The Origin of Divorce Bills.

To appreciate the position of Parliament in regard to the passing of Divorce Bills one must consider shortly the history of the practice relating to Divorce and the development of that branch of the Law.

In England, before the Reformation, marriage was regarded as a sacrament, and deemed indissoluble. But when the Reformation came different views prevailed, and the Reformers undertook to revise the whole body of Canon Law, including the matrimonial code. Acts of Parliament were passed, providing that the Crown should have power to nominate Commissioners for this purpose [25 Hen. 8, c. 19, s. 2; 27 Hen. 8, c. 15; 35 Hen. 8, c. 16; and 3 & 4 Ed. 6, c. 11]. The labours of these Commissioners resulted in the publication of a work entitled "Reformatio Legum Ecclesiasticarum," which did not receive the Royal Confirmation, but is of great authority, and embodied the recognised opinion and sentiment of the Church of England at the time. Divorce was allowed, and the unoffending party could marry again. This kind of divorce is known as divorce *a vinculo matrimonii*. The grounds for it were more numerous than those now recognised.

The first Divorce Act was that of the Marquis of *Northampton* in 1551 [5 & 6 Ed. 6]. The Bill was entitled as one "for the disannulling of the marriage between the Lord Marquis of Northampton and Lady Jane Bouchier, one of the daughters of Henry, late Earl of Essex; and for the confirming of the marriage between him and Lady

Elizabeth, daughter to Sir George Broke, Lord Cobham, and for the Legitimation of the children that shall be had between them" [1 H. L. J. 408]. But that Act was repealed in the following reign and year [1 H. L. J. Rolls of P. ccli.; 1 Mary, Sess. 2]. (On this topic see Hansard, 1830, Vol. xxiv., p. 1260.) It appears that during the period from 1550 A.D. to 1600 A.D. marriage was not held by the Church, and therefore was not held by the law, to be indissoluble. But there were many members of the Church who adhered to the old view. In the year 1601 *Foljambe's* case was decided by the Court of Star Chamber, and the doctrine of indissolubility was re-established [3 Salk. 138].

The doctrine when thus re-established operated in a rigorous manner, the various devices and fictions, such as canonical degrees and alleged pre-contracts, which had previously afforded loopholes of escape from its severity, having been each and all put an end to at the Reformation. The decree of divorce *a mensâ et thoro*, which alone the Ecclesiastical Courts could pronounce, did not permit of the remarriage even of the unoffending party.

Divorce a Mensâ et Thoro.

The jurisdiction of the Ecclesiastical Courts in regard to Divorce was taken away by the Matrimonial Causes Act, 1857, and to the new Court for Divorce and Matrimonial Causes then established was given the power to pronounce a decree for a "judicial separation," which had the same force and consequences as a divorce *a mensâ et thoro* [20 & 21 Vict., c. 85, ss. 2, 7]. That jurisdiction is now exercised by the Probate, Divorce, and Admiralty Division of the High Court of Justice.

Divorce a Vinculo Matrimonii.

Parties divorced only *a mensâ et thoro* (*i.e.*, "from bed and board and mutual cohabitation") from the time of *Foljambe's* case, 1600 A.D., endeavoured to find some competent tribunal which would set them free from the marriage bond and enable them to contract a second marriage—that is to say, grant them a divorce *a vinculo matrimonii*. Such a tribunal was not found until application was

made to Parliament. The earliest cases were those of Mr. *Lukener*, Lord *Roos*, and the Earl of *Macclesfield*. Lord *Roos*, in 1666, obtained an Act to bastardise the issue of Lady Anne Roos by reason of her adultery. He followed that up by a divorce *a mensâ et thoro* in the Ecclesiastical Court, and by a second Act to enable him to marry again, and to declare the children of such marriage to be legitimate [Macq. 551]. The object of Mr. *Lukener's* Act, in 1690, was to prevent the evil of an illegitimate family being fathered upon him [10 H. C. J. 357; 14 H. L. J. 458]. The object of the Earl of *Macclesfield's* Act was to give him the redress that the Spiritual Courts had refused [Macq. 574]. These precedents were soon followed by other cases, and in 1701, without any special reason being assigned, there was passed "An Act to dissolve the marriage of *Ralph Box* with Elizabeth Eyre, and to enable him to marry again"—a title followed from that time to this. The chief ground for relief ever since alleged in the preamble of Bills where the husband is petitioner is that he is "liable to have spurious issue forced upon him" unless the Act be passed. From the year 1701 to the present time the Legislature has in fact constituted itself a Court for granting divorces *a vinculo matrimonii*. The proceedings conducted before either House of Parliament is in no sense of the nature of an appeal.

In deciding, on the evidence before them, to pass or reject a Bill each House exercises an original and independent jurisdiction.

As to the nature of this jurisdiction the following passages from Mr. Gordon's monograph on "The Appellate Jurisdiction of the House of Lords and the Full Parliament" may be quoted:—

> "It is very strange that the judicial character of the High Court of Parliament in full Session should have become so obscured as it has in recent times, and it is doubly strange that the exercise of judicial functions by the House of Commons should have in a special sense passed out of observation. Certain judicial functions the House does, indeed, perform to everybody's knowledge, as, for example, when it investigates and punishes a breach of privilege, or when it considers and passes a Divorce Bill. . . . It cannot be doubted that the success of our judi-

> cature in modern times is bound up with the full development of that very complex system of law which is known as Equity—the rule of reason and good conscience. Now, Equity, as contrasted with the Common Law, which is the law of the Realm, is the law of Parliament, and historically its introduction can be traced to the exercise by Parliament, and particularly by the House of Commons, of those judicial functions which of late have fallen into such remarkable abeyance. By that Act [Miss *Turner's*, 1827] the fraudulent and enforced marriage of Miss Turner with E. G. Wakefield was annulled, the Parliament confessedly acting in a judicial capacity to give relief upon general principles of Equity to a plaintiff who could have no adequate remedy by the law of the land."

Mr. Gordon's remarks on Miss *Turner's* case applies to all the Divorce Bills passed down to the present day. Mr. Kerly in his "Historical Sketch of the Equitable Jurisdiction of the Court of Chancery" traces the Private Bill to the same origin.

But whether this view be correct or not, Parliament has acted judicially to give relief in cases in which justice required it and there was either no remedy at law or such remedy could not easily be invoked. In 1690 James Campbell carried off by force and married *Mary Wharton*. A public Bill to prevent clandestine marriages was introduced and passed in the House of Commons. In that House a clause to declare and make void this particular marriage was proposed and rejected [10 H. C. J. 493]; but relief was given to the lady by a separate Bill. This passed in the House of Commons, and in the House of Lords "all parties on either side" were examined by a Committee, and the Bill passed in due course [14. H. L. J. 583, 591]. In 1696 another case of annulment of marriage came before Parliament. The petition for a Bill was presented to the House of Commons on behalf of a child, one *Hannah Knight*, an heiress who was enticed into a marriage before she was ten years of age. Leave was "given to bring in a Bill for recovering the person of *Hannah Knight*, an infant, and to disannul the pretended marriage of one T. Gooding, junr., with the said infant, and to attaint one Pasmore for felony, for taking away the said infant if she do not produce and deliver her up by a certain time; and to prevent the marriage of the said

infant with the said T. G. for the future" [11 H. C. J. 753]. An exhaustive inquiry took place before a Committee, and the title of the Bill was altered [*ibid.* 770-3]. In the House of Lords the mother of the girl and the husband were heard by counsel [16 H. L. J. 146]. The Bill passed in three days as "An Act for annulling the marriage of *Hannah Knight*, an infant, and to direct the guardianship of the said infant" [*ibid.* 149]. These two are the only cases of personal Bills dealing with annulment of marriage that have been introduced in the House of Commons.

Relief, however, was granted by Parliament in cases other than divorce or annulment of marriage. Two for separation at the suits of the wives are recorded in the journals. The first occurred in 1700, when a Bill was introduced, after opposition, "for separating James, Earl of *Anglesey*, from Katherine, Countess of *Anglesey*, his wife, for the cruelty of the said Earl" [16 H. L. J. 609, 611]. Counsel and witnesses were heard on the second reading [*ibid.* 621]. In reply on the case counsel proposed to read affidavits made by witnesses (who were not examined *viva voce*) to contradict evidence given at the Bar by other witnesses; this was not permitted [*ibid.* 640]. The House ordered that certain Judges should draw clauses to give effect to amendments as to settlements recommended by the Committee [*ibid.* 658]. The Bill was opposed in the House of Commons on the ground that the case was within the jurisdiction of the ordinary Courts, and no remedy was needed from Parliament [13 H. C. J. 511]. It passed into law in due course. The second case for a separation was that of Lady *Ferrers* in 1758. She made more than one attempt to have a Bill introduced in the House of Lords [29 H. L. J. 36, 50, 71, 76]. Earl *Ferrers* waived his privileges, and so defeated her application by leaving her a remedy in the Ecclesiastical Court [*ibid.* 98, 108]. Finally she again appealed to Parliament with success [*ibid.* 290-1]. The Bill passed in due course.

The foregoing cases illustrate the circumstances in which this jurisdiction has been exercised. Where justice required it, Acts were passed to give relief. The pro-

ceedings were so conducted in both Houses of Parliament that the parties had every opportunity, with the assistance of counsel, of having their cases considered very fully, subject to the laws of evidence. The inquiries were conducted in a judicial manner. (See Macqueen's Husband and Wife, 6th Ed., p. 163.)

The judicial nature of the proceedings in the House of Commons has been recognised in recent times. In *Chippendall's* case, 1850, in reporting on an application to proceed *in forma pauperis* the Committee of the House of Commons distinguish Divorce from ordinary Private Bills:—"Your Committee conceive that Divorce Bills are of a very different character from the usual application made by individuals or companies to Parliament; they partake rather of the nature of an application to a Court of Law for the redress of a civil inquiry, and the promoter is required first to obtain a sentence of divorce, &c." It was thereupon resolved, "That this House doth agree with the Committee in the said report" [105 H. C. J. 563].

In connection with this topic it may here be pointed out that the doctrine that a husband petitioner should not be allowed to throw a guilty wife penniless on the world originated in the House of Commons, was at a later date accepted by the House of Lords, and finally embodied, as regards England, in the Statute Law. From the following pages it will be seen that the provisions of the Matrimonial Causes Act, 1857, as regards divorce *a vinculo*, are a transference or delegation of the powers of Parliament, and not a development of the Ecclesiastical Law.

For the sake of convenience the petitioner's case is heard at a morning sitting of the House of Lords, but the House is then in full Session, and not constituted as a Court of Appeal. On some occasions Peers who are not Law Lords have taken part in the proceedings. In the present day in the House of Commons the case is heard and substantially decided by the Select Committee, including usually the Law Officers and ex-Law Officers of the Crown, the Lord Advocate, and a majority of lay members.

Many Divorce Acts were passed and Bills rejected from

1701 till 1857. The yearly average increased till in the year 1799 the maximum of 10 was reached. Twice there were 9 in one year, and on three occasions 8. Up to and including the year 1857 there were 317 Divorce Bills passed.

Private Bills for Divorce until the year 1868 were commonly regarded as being of the nature of *privilegia,* but in that year Lord Westbury, in *Shaw* v. *Gould,* expressed his view as follows:—

> "In England, since the Reformation, marriage, being no longer a sacrament, has always in theory of law been dissoluble for adultery in the wife, and for incestuous adultery and other crimes by the husband; but until the recent Divorce Act this law was administered by Parliament alone, and although the decision of Parliament was in form of an Act or *privilegium,* and not of a judicial decree, yet the Act was granted upon evidence proving that the case came within the scope of certain established rules. This proceeding was in spirit a judicial, though in form a legislative, act. The justice of divorce was recognised, but no forensic tribunal was entrusted with the power of applying the remedy. But the law and practice of Parliament were well known; and, in fact, this House acted as a Court of Justice. It cannot, therefore, be correctly said, that divorce *a vinculo matrimonii* was contrary to the principles and institutions of this country. It follows that the validity of a foreign decree of divorce must be ascertained in the same manner and on the same rules by which the conclusive effect of other foreign judgments has to be determined" [L. R. 3 E. & I. App. 84]. (See also *Wyndham's* and *Sandwith's* Bills, 3 Macq. Rep. 43, 770.)

The grounds for a successful application to Parliament for a private Act are contained in a long series of precedents. These precedents constitute the "established rules" referred to by Lord Westbury above. In the year 1798 Lord Chancellor Loughborough called the attention of the House to the propriety of laying down general rules which should precede the consideration of every case, and with which the parties seeking divorce should be bound to comply. These resolutions were embodied in the Standing Orders which (with minor modifications) are now numbered 175 and 178 (*post,* p. 110). Other Standing Orders, now numbered 176 and 177, were made in 1809 and 1831 (*post,* p. 110).

In 1857 jurisdiction was given to the English Court for

Divorce and Matrimonial Causes to grant divorce *a vinculo matrimonii*. That statute may therefore be regarded as a codification of the rules and practice of Parliament. Several of the grounds enumerated in sect. 27 of the Act of 1857 (20 & 21 Vict., c. 85) on which a wife can obtain a divorce had been previously recognised by Parliament. Many of the other provisions of the Act reproduce the Parliamentary practice under quite different conditions. Some of these conditions may be compared as follows:— 1. The rules and practice respecting the bringing of, or dispensing with, an action for criminal conversation against the adulterer have their counterpart in the enactments and rules with regard to making a man a co-respondent or excusing the petitioner from so doing. 2. The preamble of the Bill corresponds in its essential features with the petition in the High Court. 3. The taking of evidence orally and subject to cross-examination, as had been the practice in the House of Lords, was substituted under the Act of 1857 for the examinations by previously-prepared questions that prevailed in the Ecclesiastical Courts. 4. The necessary delay that elapsed between the divorce *a mensâ et thoro* and the passing of a Divorce Act corresponds to the six months between the decree *nisi* and the decree absolute. 5. The powers exercised by the House of Lords of enquiring into the conduct of the parties are those conferred by statute on the King's Proctor. 6. The practice of the House of Lords in rejecting Bills on account of the neglect or other misconduct of the petitioner gave rise to the conditional bars to relief. And (7) the practice of Parliament with respect to the maintenance of a guilty wife and the variation of settlements has its counterpart in the 32nd and 45th sections of the Act of 1857 and the Matrimonial Causes Act, 1859 (22 & 23 Vict., c. 61, s. 5).

The learned Judges of the High Court have regarded the Act of 1857 as being a development of the older practice, and in turn in Irish cases the House of Lords has followed the practice of the English High Court. Instances of each will occur in the following pages. Thus the substantive law is the same in both systems, although

the procedure is quite different—the old and the new are developed side by side.

Divorce in Ireland.

In Ireland a state of things prevailed similar to that in England. The Ecclesiastical Law was the same as that of England, and similarly administered. During the 17th and 18th centuries divorce *a vinculo* was not recognised. In the year 1870 jurisdiction in cases of divorce *a mensâ et thoro* was transferred from the Ecclesiastical Courts to the Court for Matrimonial Causes and Matters (33 & 34 Vict., c. 110, ss. 5, 7,), then to the Probate and Matrimonial Division of the High Court of Justice (40 & 41 Vict., c. 57, ss. 21, 34), and finally to the King's Bench Division of the same Court (60 & 61 Vict., c. 66, s. 5).

The demand for divorce *a vinculo* was not so pressing as in England. It was granted by the Irish Parliament. The earliest case reported in the Journals is that of Mr. *Austin*. On presentation of the petition to the House of Lords for leave "that heads of Bills may be brought in to dissolve his said marriage with the said Mary Mitchell and to enable him to marry again," it was ordered "that the Lords present shall be and are hereby appointed a Committee to prepare and bring in heads of a Bill, according to the prayer of the said petition, and the Judges to assist" [3 Ir. H. L. J. 97]. After the "heads" were read a second time witnesses were called in and sworn; the House then went into Committee and heard counsel and evidence [*ibid.* 102]. The House considered the heads again in Committee on three occasions and made amendments. Finally they were read a third time and sent to the Lord Lieutenant to be transmitted to Great Britain in due course [*ibid.* 105].

On the "heads" being returned a Bill was introduced and examined by a Committee with the original "transmiss" returned sealed with the Great Seal of Great Britain [*ibid.* 127]. The Bill was then formally passed. It was then sent to the House of Commons, where the respondent petitioned against it, but it passed without amendment [3 Ir. H. C. J. 641, 646].

The procedure adopted ensured until 1782 a uniformity in respect of the grounds on which these Bills were passed in both countries. From 1782 to 1800 the "heads of Bills" were no longer transmitted to England. Up to the Act of Union there were nine Divorce Bills passed and one rejected. From the records in the Journals of both Houses the procedure appears to have been the same as in England.

In the year 1753 Mr. *Low*, a barrister of the Middle Temple, who resided in Ireland, presented a petition to the English House of Lords for the introduction of a Bill. Having regard to the fact that "the residence of the petitioner and his wife was in Ireland, and that the petitioner may make application to the Parliament there for relief," the petition was referred to a Committee [28 H. L. J. 50]. The marriage was celebrated at St. Mary-le-Strand; the respondent eloped from Ireland; the adultery charged was committed in Wales and Yorkshire; and there was no previous action at law [*ibid.* 115]. The Committee reported in favour of the Bill being introduced [*ibid.* 85]. It passed in due course.

The precedent set in Mr. *Low's* case was followed in those of *Daly*, 1768 [32 H. L. J. 79], and *Martin*, 1793 [39 H. L. J. 625]. Thus it will be seen that the British Parliament exercised its powers in the case of domiciled Irishmen who were subject to a separate Legislature which could and did dissolve marriages *a vinculo*. There is no record of the validity of such divorces having been questioned in Ireland.

After the Union the Imperial Parliament succeeded to the Irish. Hence the remarks of Lord Westbury, quoted above, may be taken to apply to the law of Ireland at the present day. Before 1857 Irish petitioners frequently had recourse to the English Ecclesiastical Courts before applying to Parliament.

The passing of the Matrimonial Causes Act, 1857, has not been without its effect on the practice in Irish cases. Lord Herschell (Lord Chancellor) in *Westropp's* Bill said:—"Whatever may have been the case prior to the passing of the Divorce Act of 1857, I think that since the

passing of that Act whatever would justify a divorce and afford a legal ground for it according to the provisions of that Act, where that Act prevails, will afford sufficient grounds for an application to the Legislature to grant a divorce in that part of the United Kingdom where the Act does not itself operate" [11 App. Ca. 297]. The remedy is not, however, necessarily confined to such cases [*ibid.*, per Lord Blackburn]. This rule has been followed in subsequent cases. In Mrs. *Lautour's* case, 1905, the grounds were adultery and desertion for twenty years, although the learned Judge of the Court in Dublin was unable to declare desertion as a ground for the decree, as it is not a ground for divorce *a mensâ et thoro*. The principle of Mrs. *Westropp's* case may be extended to the practice as well as the grounds for divorce, as the intention is to put persons domiciled in Ireland as near as may be in the same position as those domiciled in England.

The Extent to which the Jurisdiction is exercised.

The power of the Legislature to legislate extends in the matter of divorce over all persons domiciled within the Empire. But with the exception of Mr. *Low's* and subsequent cases of Irish petitioners, referred to on the preceding page, there is no record of its having been exercised in cases where the petitioner was domiciled in a country the Courts of which had jurisdiction to dissolve his or her marriage. (See *Sandwith's* Bill, 3 Macq. Rep. 770.) In the case of the Dominion of Canada there are no such Courts. By the British North America Act, 1867, the subjects of marriage and divorce were submitted to the exclusive legislative authority of the Parliament of Canada, which grants divorces *a vinculo matrimonii* by private Acts, following the practice of the Imperial Parliament. Before 1867 (as in Ireland before 1782) these Acts were forwarded to England for approval; since that date they are dealt with exclusively by the Dominion Legislature. [See the Practice of the Parliament of Canada upon Bills of Divorce by J. A. Gemmill, Barrister-at-Law (Carswell & Co., Toronto).] Since the conferring of power to grant divorces *a vinculo* on the Indian Courts in 1869

all Private Divorce Acts have been for the dissolution of marriages of persons whose domicile was Irish. From 1869 to 1905 twenty-seven such Bills have passed. In the case of *Le Mesurier* v. *Le Mesurier* it was held by the Privy Council that "according to International Law the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage" [1895, A. C. 517, 540]. According to that decision persons domiciled in Ireland can resort only to Parliament for a dissolution of marriage.

But in many cases persons who were at the time domiciled in Ireland have resorted to the English Court and there have obtained decrees of absolute divorce, as distinguished from those for judicial separation. The question arises as to whether, when a decree has been obtained without fraud or collusion in the English Court, such can or may be recognised in Ireland.

This question was raised, but not solved, in Colonel *Sinclair's* case [I. R., 1896, 1 Ch. 603]. The petitioner was a domiciled Irishman, and was married in Bombay in 1878. A divorce was obtained in the English Court in 1885, when the parties were in England, no objection being taken to the jurisdiction of the Court by the respondent, and the fact of the domicile of the parties being Irish was not concealed. In 1886 an order was made by the English Court varying the trusts of the marriage settlement. The trustees subsequently refused to recognise the validity of that order. The petitioner, on advice, took proceedings afresh in the Irish Courts for divorce *a mensâ et thoro*, with a view to promoting a Divorce Bill. The learned President of the Probate Division declined to give a decision as to the effect of the English decree in Ireland. But he expressed the following opinion [1896, I. R. 1 Ch. 608]:—

> "The English Court has jurisdiction to make a decree for a divorce *a vinculo* between British subjects personally present within the jurisdiction of the English Courts where adultery is carried on in England, notwithstanding a foreign domicile, in cases where the petitioner by the very Act of Petition, and the respondent by appearing without protest, or by not appearing at all, submit to the jurisdiction of the Court. On the other hand, I

think that by the law of nations the validity of such a divorce is limited to the country where the decree is made, unless it is the country of the domicile of the parties and does not extend to foreign countries, and for this purpose, as regards English decrees, Ireland is a foreign country." . (At p. 601.) "I have arrived at the conclusion that it is expedient that the whole case should be dealt with in the first instance by a competent tribunal of supreme authority—of course I mean the House of Lords."

The learned Judge declined to make a decree *a mensâ et thoro*, on the ground that it was not necessary in the circumstances, and considering the wording of Standing Order No. 175 (*post*, p. 110). (During the argument on Col. *Malone's* Bill, 1905, when the foregoing passage was quoted, the Earl of *Halsbury*, L.C., said:—"The validity of the decree was never argued at all. The application was made with a perfectly legitimate object, and the decree should have either been made or definitely refused.") The Court of Appeal gave no decision, but ordered the case to stand over till after the application for a Bill to the House of Lords [*ibid.* 613]. The House of Lords expressed no opinion as to the validity of the English decree in Ireland [1897, A. C. 478]. The Earl of *Halsbury*, L.C., said:—"I do not think it necessary to express any opinion as to the exact effect of the Standing Orders, but I think the rules have been complied with in these proceedings" [*ibid.* 475]. In compliance with the Standing Order there had been handed in copies of the proceedings in the English Court as well as those in the Probate and Matrimonial Division of the Irish High Court and the Court of Appeal [129 H. L. J. 49]. The issue was again raised in Col. *Malone's* case (1905). Col. Malone, a domiciled Irishman, was married in London, where he had a residence. In 1892 he obtained a divorce in the English Court. At that date he had a London residence as well as his permanent home in Ireland. Mrs. Malone was married again abroad in 1892, and Col. Malone the following year in England. Of his second marriage there were several children. It became necessary for certain purposes to consolidate certain charges on his estate. In connection with that matter doubts arose as to the validity of the English decree. Col. Malone, in order to remove doubts, asked leave

to introduce a Divorce Bill in the usual form, but containing a clause making it operative as from the date of the English decree. The House of Lords, having heard the facts opened, allowed the Bill to be altered into one of a single clause to remove doubts as to the validity of the English decree [1905, A. C. 314].

The issue raised in these two cases is a very wide one, and is a question of the Comity of Nations. As regards the foregoing or similar cases the question may be stated in another form. If the Irish Courts, as a matter of public policy, choose to adopt and act on an English decree, obtained *bonâ fide,* is there any rule of International Law to prevent them so doing? Lord Westbury, in *Shaw* v. *Gould* [L. R. 3 E. & I. App. 82], states the rule in the following terms:—

> "No nation can be required to admit that its domiciled subjects may lawfully resort to another country for the purpose of evading the laws under which they live. When they return to the country of their domicile, bringing back with them a foreign judgment so obtained, the tribunals of the domicile are entitled, or even bound, to reject such judgment, as having no extra-territorial force or validity. They are *entitled* to reject it, if pronounced by a tribunal not having competent jurisdiction, and they are *bound* to reject it if it be an invasion of their own laws and polity."

But if Lord Westbury's view, quoted *ante*, p. 7, be correct an English decree, from the point of view of the Irish Courts, would not be an "invasion of their own laws and polity." On the contrary, although the procedure is different, the substantive law is identical in both countries, having been developed by the same tribunals, for (with the exception of the short period 1782 to 1800) Divorce Bills in the Irish Parliament obtained the approval of the English Council, previous to their being passed in the Lords. When Col. Sinclair and Col. Malone resorted to the English Courts they were in fact doing what other Irishmen had done without question before 1800 (*ante*, p. 10).

In both those cases the difficulties arose with respect to settlements, the English Courts having no jurisdiction over Irish trustees of Irish settlements or over Irish land.

An examination of the facts in *Le Mesurier's* case shows that the points there decided are:—(1) That the proper Court to which to apply, and for whose decrees alone universal recognition can be claimed, is that of the husband's domicile; and (2) that any other Court is entitled to hold its hand and decline to give a decree even though such a decree if given would be recognised within the area of the jurisdiction of the Court.

The final solution of the problem will probably lie with the Irish Courts, perhaps by means of an application for a declaration of validity of a subsequent marriage. The learned Judge in Col. *Sinclair's* case was in error in thinking the issue could be disposed of in the House of Lords on proceedings on a Divorce Bill, for in such cases the House does not act as a Court of Appeal at all, and may be constituted in quite a different manner than when sitting to hear appeals. Since Col. *Malone's* case was heard the English Court will hold its hand and refuse to grant a decree of divorce as soon as it appears that the husband is not domiciled in England [*Livingstone* v. *Livingstone*]. But Col. *Sinclair's* and Col. *Malone's* are not the only cases in which Irish petitioners have resorted to the English Court, so the question may at any time again arise for decision.

With Col. *Malone's* case should be contrasted that of Mr. *Tollemache* (1857). In that case the husband's domicile of origin was English. He was married in 1837 to a lady who was then domiciled in Scotland. The marriage was celebrated in both countries. There was cohabitation till 1841 in England and Scotland, and residence in Scotland. He divorced his wife in Scotland in 1841. Doubts arose in 1846, and counsel advised that the Scotch decree would be recognised in all countries. Doubts again arose in 1855, and other counsel advised that the decree would not be recognised in England. Mr. Tollemache then petitioned Parliament for a Bill to declare his marriage "dissolved and made void as from the 3rd day of July, 1841." A Committee of the House of Lords enquired into the matter, and, finding no precedents, reported against the introduction of the Bill. The petition was rejected [89

H. L. J. 320]. In 1859 the case came before the English Court. A jury found that the domicile was English, and a divorce was finally pronounced, the Court declining to recognise the Scotch divorce.

Similar cases are reported in legal books, in which the parties have resorted to Courts other than those of the country of their domicile, and the question of jurisdiction has not been raised during their lives, but has subsequently caused litigation with the effect of having the children of a subsequent marriage declared illegitimate.

A petitioner who, at the time of seeking a divorce, is domiciled in Ireland, wherever the marriage may have been celebrated [*Thomson's* Act, 1867, *Campbell's* Act, 1857, *Sumner's* Act, 1855], or the adultery have been committed [*Davidson's* Act, 1856, *Sumner's* Act, 1855, *Caton's* Act, 1854, Earl of *Lincoln's* Act, 1850], should obtain an Act of Parliament to dissolve his or her marriage.

It is not necessary here to discuss the nature of "domicile," or by what tests it is to be ascertained, as this branch of the subject is fully treated in books on Private International Law. A wife's "domicile" is that of her husband. There is no such thing as "matrimonial" domicile short of actual domicile, *Le Mesurier* v. *Le Mesurier* [1895, A. C. 517].

CHAPTER II.

Proceedings Prior to the Introduction of a Bill.

The Action at Law.

When the view prevailed that a Divorce Bill was a *privilegium* it was thought to be essential that the petitioner should have exhausted his remedies in the Courts before applying for a special Act. This reason for taking an action cannot now be considered to apply.

On such an issue as the dissolution of a marriage it is

important that no means be neglected to secure a full investigation of the case, and that every safeguard be retained against collusive proceedings. It has always been the practice of both Houses of Parliament, in cases in which the petitioner has been the husband, to require either an action at law to have been brought against the adulterer or a satisfactory reason to be adduced for not having so done. A Bill will not be read a second time in the House of Lords until the report of an action for criminal conversation (or its equivalent), where such action has been brought, be transmitted from the Court to the Clerk of Parliaments (Standing Order No. 177, *post*, p. 110). The Committee on Divorce Bills in the House of Commons will require evidence that such an action has been brought or sufficient cause be shown why it was not brought, or a judgment thereon not obtained (Standing Order No. 190, *post*, p. 114).

When the Action may be Dispensed with.

The following precedents may be referred to with regard to failure to bring an action. *Webster's* Act, 1851:—The adulterer was never within the jurisdiction of the Courts. *Boileau's* Bill, 1845:—The adulterer was absent from the country: strict evidence of that fact was required [77 H. L. J. 96]. *Davidson's* Act, 1856:—Adultery was committed abroad with a French subject residing abroad. *Sumner's* Act, 1855:—The adulterer was a foreigner resident in foreign parts beyond the seas. *Caton's* Act, 1854:—The adulterer had never been within the jurisdiction of the Courts. The Earl of *Lincoln's* Bill, 1850:—The adulterer, an Englishman, was on the Continent, out of the jurisdiction of the Courts.

It has always been a sufficient excuse to show that the adulterer cannot be discovered: *Coode's* Bill, 1839, in which a large number of precedents are referred to [6 Cl. & Fin. 567; 71 H. L. J. App. 2], or that, although his name be known, he cannot be found: *Sewell's* Bill, 1842 [74 H. L. J. App. 82]. Sometimes the action cannot be brought on account of the poverty of the petitioner: *Martin's* Bill, 1847 [1 H. L. Ca. 79; 79 H. L. J. 76].

When required the petitioner must be able to produce evidence in support of his allegation that he has not been able to bring an action: *Waldy's* Bill, 1849 [81 H. L. J. 54]. In *James'* case, 1849 [*ibid.* 85, 86], evidence was given of an interview with the adulterer in Paris for the purpose of inducing him to enter an appearance to the action; but no appearance was entered. Where there is an unusual delay the action may be barred by the Statute of Limitations: *Cutbill's* Bill, 1853 (*post*, p. 81). In *Warr's* case, 1840 [72 H. L. J. 111, App. 313; Macq. 666], the petitioner was a labouring man, and evidence was given that he was too poor to bring an action within the period allowed by the Statute of Limitations.

In the preamble of *Brookes'* Act, 1847, it is recited that no action for criminal conversation was brought because the "wife's general conduct was so bad." The petitioner could not afford to spend money on a Bill for a period of nine years after cohabitation had ceased. His solicitor gave evidence that at the time of the proceedings in the Consistorial Court, some eight years previously, he had consulted with a Proctor, who agreed with him that "her general conduct was so bad it would not be advisable to bring an action," although the name of one person, a man of means, who was guilty of adultery with her, was known [79 H. L. J. 264; 1 H. L. Ca. 159].

Action brought elsewhere than in Ireland.

Where the adulterer was not within the jurisdiction of the Irish Courts the action in some cases has been brought elsewhere. In Col. *Thomson's* case, 1867, the parties were married in Quebec, and subsequently lived in India. The adultery was committed in England. The action was brought in Umballa. The application for divorce *a mensâ et thoro* to the High Court of Bengal was refused for want of jurisdiction, but the divorce was subsequently obtained in a Diocesan Court in Ireland. In *Malcomson's* case, 1873, the petitioner was unable to bring an action in Ireland, but instead brought a petition for damages in the English High Court under 20 & 21 Vict., c. 85, s. 33. This petition was dismissed on the ground that the parties were

at the time of the acts complained of living apart under a deed of separation (26th Feb., 1873). This ground would not be good according to the law of Ireland [see Rev. *W. Vanston's* Bill, *post*, p. 92] But now, under Order XI., rule 1 (*i.*), of the Rules of the Supreme Court, Ireland, "Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever the action is for criminal conversation committed within His Majesty's Dominions brought by a plaintiff domiciled within the jurisdiction." Hence the action can be brought in the High Court in Dublin.

Failure of Action.

It is by no means essential to the petitioner's case for a Bill that he succeed in his action for criminal conversation. In some cases evidence against a wife, such as her confession, is not admissible against her paramour. In *Loveden's* case, 1811, the action failed [48 H. L. J. 153]. The adultery proved in the Consistory Court was inferred from the general behaviour of the parties and the circumstances under which they met. The crucial evidence consisted in letters addressed by the respondent to her paramour which had been intercepted [2 Hag. Con. 22; 48 H. L. J. 254], and were not, therefore, evidence against him [2 Hag. Con. 52]. In *Jones's* case, 1855, the petitioner could not proceed with his action in the Court of Exchequer owing to want of means, and was nonsuited. (See also *Malcomson's* case, *ante*, p. 18). In a recent case judgment was given for the defendant, as the farthing damages recovered did not amount to the sum paid into Court, £5.

In *Moore's* case, 1805, the petitioner had conscientious scruples against taking damages to a greater amount than would recoup him for the costs of all the proceedings [45 H. L. J. 188, 237; Macq. 602]. In *Weston's* case, in the same year, damages were not levied nor was the defendant arrested, as the petitioner's solicitor knew there was no chance of recovering them, and wished to save his client expense [45 H. L. J. 246].

In Col. *Cautley's* case, 1850, no damages were recovered. Evidence was given that "Col. Cautley's object was not so much to recover a large amount of damages as to enable him to come to the House of Lords for a divorce." The Bill passed.

In other cases evidence has been given of unsuccessful attempts to recover the damages—*Gape's* and *Archbutt's* cases, 1844 [76 H. L. J. 406, 417], or of part payment—*Tayleur's* case, 1851 [1 Macq. Rep. 279].

It is no objection that a verdict is taken by consent. This has frequently been done: see *Beamish's* Act, 1877; *Ley's* Act, 1857; *Beren's* Bill, 1854 [86 H. L. J. 91]; *Fisher's* Act, 1853; *Lugard's* Bill, 1848 [80 H. L. J. 155]; *Britten's* Bill, 1845 [77 H. L. J. 31]; and *Watson's* Bill, 1843 [76 H. L. J. App. 261].

In *Chippendall's* case, 1850, the action was settled and the amount of damages agreed on; the terms agreed on were approved of by the Judge.

Since 1857 the policy of the law in England has been against allowing the petitioner to make money from his wife's infidelity, and the non-recovery of damages in the absence of evidence of collusion is not now inquired into so strictly as formerly.

The practice of Parliament has been codified in sect. 28 of the Matrimonial Causes Act, 1857 (20 & 21 Vict., c. 85), as follows:—"Upon any petition for dissolution of marriage presented by a husband the petitioner shall make the alleged adulterer a co-respondent to the said petition unless on special grounds, to be allowed by the Court, he shall be excused from so doing." And by sect. 33 the husband may "either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to such object, only claim damages . . . and the claim made by every such petition shall be heard and tried on the same principles, in the same manner, and subject to the same or the like rules and regulations as actions for criminal conversation are now tried and decided in Courts of Common Law, &c." Cases in which leave has been given to dispense with a co-respondent are similar to those in which Bills were passed without a verdict

having been obtained in an action at law. The policy of the Act is to give the accused man an opportunity of clearing his character, and to minimise the risk of collusive suits by having a party to the suit who should be interested in disproving the charge of adultery, quite independently of the petitioner's interest in the matter: *Carryer* v. *Carryer and Watson* [34 L. J. P. 47]; so a person who would otherwise be joined as a co-respondent should not be dispensed with from the suit without his own consent: *Edwards* v. *Edwards and Wilson* [67 L. J. P. 1].

Before determining to proceed without bringing an action, the English precedents to dispense with a co-respondent should be consulted.

Cases have frequently occurred in the English Court in which the verdict is in favour of a co-respondent although against the wife, or in which the former has been dismissed from the suit for want of evidence against him. These cases are analogous to the older cases in which the husband failed in his action for criminal conversation.

The Decree of Divorce.

Besides bringing his action for criminal conversation the petitioner must obtain a divorce *a mensâ et thoro*. There have been only two exceptions to this rule—the Duke of *Norfolk's* case, 1692-1700 [Macq. 562], and the Earl of *Macclesfield's* 1697 [*ibid.* 574]. These were before the practice of passing Divorce Bills had been recognised, and were exceptional. The cases of Miss *Wharton*, 1690 (*ante*, p. 4), Miss *Knight*, 1697 (*ante*, pp. 4, 5), and Miss *Turner*, 1827 [Macq. 642], were not properly divorce at all, but were the annulling of fraudulent or forced marriages. These cases, however, show that the jurisdiction exercised is original and inherent in the Legislature, and not in any way a matter of appeal. Even if the petitioner does not contemplate an immediate application to Parliament he should not lose any time after the discovery of evidence of adultery in obtaining a divorce *a mensâ et thoro*.

On the other hand, the petitioner may succeed both in

his action and divorce suit, and yet fail to obtain an Act. Parliament has, with regard to these Bills, taken into account many considerations which were not and could not have been a ground for refusing a divorce in the Ecclesiastical Courts. The practice has been stated by Lord *Cranworth*, L.C., in *Talbot's* case, 1856, in the following terms:—

> "These cases are cases in which attention has been ordinarily directed rather to see what the conduct of the parties has been, and whether, assuming adultery to have been committed, there are still circumstances which disqualify the suitor or the applicant from obtaining any relief in the way of legislation, or whether there are not such circumstances. It has rarely happened that there is a distinct issue raised as it were by the wife upon the fact of her having or not been guilty of adultery which is the foundation of the application."

Different issues may be raised which are not within the jurisdiction of the Ecclesiastical Court now exercised by the King's Bench Division of the High Court in Ireland. Thus, in *Cope's* case, 1801 [43 H. L. J. 154, 178; Macq. 593], on the hearing before the House of Lords certain facts pointing to neglect, if not connivance, were disclosed, and the Bill was rejected. In Col. *Powlett's* case, 1809, the evidence of adultery was not very strong, but it satisfied the Ecclesiastical Court; and a jury had awarded £3,000 damages, yet the House of Lords was not satisfied, and the Bill was rejected [47 H. L. J. 152, 329; Macq. 605]. In the case of Mrs. *Dawson*, 1848, the adultery and cruelty of the husband were proved, but the House inquired into the mode of life of the petitioner, and the result not being satisfactory the Bill was dropped [80 H. L. J. 489, 579, 663].

Besides entertaining questions raised in defence as a bar to relief, the House when necessary initiates an inquiry as to the mode of life of the parties, or examines the petitioner as to collusion. It has before it the report of the proceedings for divorce in the Irish Court. Under the provisions of the Divorce and Matrimonial Causes Act, 1857, the duty of conducting such an examination is discharged in England by the King's Proctor. When the English Court rescinds a decree *nisi* on the intervention of

the King's Proctor it performs functions similar to those discharged by the House of Lords in the foregoing cases. (The subject of "Rejection of Bills" is further considered, *post*, p. 62.)

CHAPTER III.

The Preparation of the Bill.

Time for the Introduction of a Bill.

Subject to the risk of the Bill being postponed, owing to the respondent appealing to the Court of Appeal, the petitioner may proceed with his Bill immediately he obtains his divorce and judgment in the action for criminal conversation. The preparation of the Bill may be undertaken even before the damages are assessed.

In *Webster's* case, 1851, the Bill was lodged three days after the divorce decree was obtained. Evidence was given at the second reading that the adulterer could not be found to serve a writ on him.

In the Rev. W *Vanston's* case, 1897, the proceedings in the High Court in both the divorce and action were commenced on 23rd March. The decree was obtained on 15th May, and judgment was given in the action on 10th June. The Bill was read a first time on 6th July, and received the Royal Assent on 6th August. All proceedings in the divorce were finished within five months. In the English Court six months must elapse between the decree *nisi* and the decree absolute.

But if the petitioner, through want of means or other sufficient reason, does not proceed with his Bill at once he may do so years afterwards, when he wishes to marry again. But he must give evidence to satisfy the House of Lords that the delay was not due to negligence on his part. The following cases may be referred to as precedents:— Dr. *Lardner's*, 1839, a delay of 11 years after the petitioner discovered the adultery [71 H. L. J. 663; 6 Cl. & Fin. 569]; *Deane's*, 1840, a delay of 11 years [72 H. L. J. App. 322];

Martin's, 1847, a delay of 16 years [79 H. L. J. 72, 75]; 1 H. L. Ca. 79]; *Cutbill's*, 1853, a delay of 10 years (*post*, p. 81); *Jones'*, 1855, a delay of 8 years [87 H. L. J. 156]; *Griffin's*, 1896, a delay of 11 years; and Mrs. *Lautour's*, 1905 (*post*, p. 97), a delay of 13 years from the divorce decree and 20 years from the adultery and desertion.

If the case has been contested in such a manner that an appeal is probable, the introduction of the Bill should be put off until the time allowed for appealing has expired. It has always been the rule of the House of Lords to adjourn the proceedings where an appeal in the divorce suit has been lodged—*Copley's* Bill, 1749 [27 H. L. J. 429], and Sir *Hyde Parker's* Bill, 1799 [41 H. L. J. 32]—provided it is *bonâ fide*, as to which the House may inquire and receive evidence, *Foley's* Bill, 1786 [37 H. L. J. 501, 504]. In *Dundas'* case, 1814, the explanations given as to the grounds of appeal were not satisfactory, and included matters which might have been, but were not, raised in the divorce suit. The House read the Bill a second time, and further opposition to it was dropped [49 H. L. J. 815, 829, 875, 1002, 1033].

In Sir *Edward Owen's* case, 1817, there was an appeal in the action at law by writ of error in the Exchequer Chamber. The evidence for the second reading was received *de bene esse*, and counsel were informed that the transcript of the record must be brought regularly before the House. The matter arose on an explanation being required as to the reason for damages not being levied [51 H. L. J. 54, 167].

The Bill should be introduced as early in the Session as possible, for unforeseen delays may occur, as in Capt. *Beamish's* case, 1877 (*post*, p. 86). There is no precedent for a Bill being carried over from one Session to another, nor does such a procedure appear to be possible: *Wyndham's* Bill, 1855 [3 Macq., R. 43].

The Agents for the Bill.

The practice in many English cases before 1857 was for the solicitors who conducted the divorce suit to continue to act as agents for the Bill. The employment by such of another

solicitor as "Parliamentary agent" was strongly condemned as most unusual and improper by Lord Brougham in *Wyndham's* case, 1853 [*The Times*, 13th March, p. 11]. In Irish cases in which the divorce suit was brought in the English Courts (as was done in the cases of Col. *Sinclair*, 1897, and Col. *Malone*, 1905), the solicitors who had conduct of the suit are the proper persons to act as agents. This they can do by complying with the necessary conditions at the Private Bill Office (See Rule 1, *post*, p. 113). In ordinary cases the solicitors in Ireland must instruct some solicitor or Parliamentary Agent in London to act. The procedure is judicial, and the general rules as to Parliamentary Committees do not apply.

Drafting the Bill.

The Bill is drafted by counsel. As a rule the transcript of the hearing of the divorce suit and the papers in it and the action at law constitute sufficient instructions. In some cases where it is sought to vary settlements or ask for custody of children, or make provision for a wife when petitioner, further instructions will be required.

The preamble to the Bill is in form a petition to the King in Parliament, in which are set forth the circumstances and reasons for which the petitioner prays "that it may be enacted, &c." The petition addressed to the House of Lords was formerly in similar terms, and informed Parliament of the facts upon which the claim to relief is founded. Now a copy of the Bill forms part of the petition. Besides discharging these functions the preamble has another that is equally important. When the Bill is served on the respondent or other persons interested it informs them of the charges that are made, and of any proposal to vary settlements or otherwise affect third parties interested.

The paragraphs of the preamble should be clear and concise. Long statements or setting out letters in full (as was done in a recent case) are quite unnecessary. The essential matters to be dealt with in all cases are:—(1) The marriage of the parties; (2) duration of cohabitation; (3) denial of cohabitation after discovery of adultery;

(4) a statement as to whether there has or has not been issue of the marriage; (5) particulars of adultery and other charges on which the claim to relief is founded; (6) particulars of the action at law, if any, and particulars of the divorce suit Under certain circumstances further particulars may be necessary—viz., (1*a*) marriage settlements recited; (2*a*) particulars of separation and separation deeds recited; (3*a*) condonation and subsequent revival of a marital offence; (4*a*) the names and other particulars as to children; and (6*a*) an explanation of the fact that an action was not brought or damages not recovered. In exceptional cases, such as Col. *Sinclair's* and Col. *Malone's*, the preamble must be drafted to recite all the circumstances. These subjects will now be considered in the above order.

1. *Marriage and Marriage Settlements.*

Particulars must be given of the names of the parties, the date and place of marriage. As a rule these are taken from the certificates. In the absence of any enacting clause to vary a settlement the passing of the Act does not affect its operations: *Evans* v. *Carrington* [30 L. J. Ch. 369]. If it be proposed to vary settlements these must be recited with sufficient particularity to inform the House of their nature and effect, and also the names and addresses of the trustees thereof. For example of variation of settlements the following Acts may be consulted:—Dr. *Campbell's*, 1801; *Dundas'*, 1814; Sir *W. Abdy's* and Genl. *Dyott's*, 1816 (*post*, p. 74); *Tyrrell's*, 1829; *Jones'*, 1855; *Baring's*, 1857; Col. *Sinclair's*, 1897; and Sir *R. MacConnell's*, 1905. In Capt. *Berens'* case, 1854 [not reported], a settlement of £400 per annum had been made by the petitioner's father upon Mrs. Berens. It was proposed to discontinue this by a clause in the Bill, upon the ground that "as the dower or jointure of the wife was generally taken away in these cases, that which here represented the dower should in this instance follow the same course." Counsel were thereupon informed "that the House were of opinion that the property which had been settled by the marriage contract could not be taken away from Mrs. Berens."

Where the husband is petitioner, and does not recite the settlement, the wife is entitled to have it produced and a declaratory clause inserted to preserve her rights: *Campbell's* Bill, 1857 [89 H. L. J. 51]. In former times if the wife's conduct had been very bad she received little or none of the property settled: *Howard's* case, 1794 [40 H. L. J. 100], and Dr. *Campbell's*, 1801. In other cases the allowance made will be more liberal (see *Jones'* Act, 1855, and *Baring's* Act, 1857). If the variation proposed be not satisfactory the House will amend it in favour of the wife, *Baring's* Act, 1857 [89 H. L. J. 221]. In *Sumner's* case, 1855, the wife's solicitor attended at the Bar of the House on the hearing of the petition for substituted service, and produced a letter in which she renounced her claims under the settlement, on the condition she retained her own property [87 H. L. J. 183]. No variation in a settlement will be allowed which can in any way injuriously affect the interests of the children of the marriage.

The practice as regards settlements may be considered as codified in the Divorce and Matrimonial Causes Act, 1857 (*ante*, p. 8), hence the English precedents may be referred to. This subject is further considered in relation to provision for the wife (*post*, p. 35).

2. *Cohabitation and Separation Deeds.*

The period of cohabitation must be stated, and the fact of any lengthened separation by reason of mutual agreement or decree of a Court (*e.g.*, *Hadow's* Act, 1855). In *Sullivan's* case, 1825, there had been a deed of separation executed. On counsel opening the case and mentioning the circumstance leading up to the execution of the deed, the House held that the facts should have been set out in the preamble (which contained no allusion to the separation), but they allowed the petitioner to withdraw the Bill and present a new one [57 H. L. J. 804; Macq. 637]. In Lord *Lismore's* case, 1826, it was held that in the case of a voluntary separation the onus lay on the petitioner to call evidence to induce the House to make an exception to their general rule not to pass a Bill where there had been a voluntary separation [58 H. L. J. 73, 88]. The modern

practice is to consider all the circumstances, and whether the conduct of the petitioner conduced to the commission of adultery, the precedents in the English Court being followed. (See further, the Rev. *W Vanston's* case, *post*, p. 92, and Rejection of Bills, *post*, p. 62.)

3. *Cohabitation Ceasing and Revival after Condonation.*

A statement must be inserted in the preamble to the effect that the petitioner has ceased to cohabit with the respondent immediately on the discovery of the commission of adultery or other offence on which the claim to relief is grounded. This is usually effected by a few words at the end of the paragraph describing cohabitation. In some cases where the wife is petitioner two distinct offences are necessary for relief, for adultery alone is insufficient; there may be adultery and cruelty, or adultery and desertion, on the part of the husband. When complete forgiveness is accorded and cohabitation resumed the offence is "condoned." But the commission of a subsequent marital offence revives the condoned offence, and on commission of the second offence, say adultery, former condoned cruelty may be revived, and the wife may proceed on both charges. Desertion as well as cruelty may revive adultery, and *vice versa*: *Houghton* v. *Houghton* and *Paine* v. *Paine* [1903, P. 150 & 263]. The short statement respecting cohabitation ceasing is made in connection with the second offence.

4. *Issue of the Marriage.*

It has been the practice to set out the names of children, if any, with their ages or respective dates of birth. But there is no decision to the effect that such details are necessary, and in *Todd's* Bill, 1896, such particulars were struck out by the House after the Bill had been considered in Committee [128 H. L. J. 211]. As there was nothing in the speech of counsel or the evidence at all bearing on the subject, the inclusion of these particulars was unnecessary and irrelevant as regards the grounds for divorce. In cases where settlements are recited or varied, or in which

the custody of children is claimed, it will be necessary to set out the names and ages of the children.

In many cases in which illegitimate children have been born this paragraph has been so worded as to exclude any other than those named: see *Tayleur's* Act, 1851; *Stocker's* Act, 1854; and *Wyndham's* Act, 1855. It may in some instances be difficult to draft a paragraph that will be just to the child and not act as an estoppel against the petitioner. In all cases the dominant consideration must be the interests of the child. See *Hewat's* case, 1887 (*post*, p. 89).

Illegitimate Children.

One of the objects of the first Divorce Bills was the bastardising of children born in adultery. (See *ante*, p. 3). It became the practice to recite the birth and names of such, and also a clause declaring them to be bastard. In 1783 the Judges were summoned to deliver their opinion on the question—"Whether the issue born of a woman after twelve months from the day of her elopement from her husband, and living apart from him in open adultery, such husband having instituted a suit in the Ecclesiastical Court, and no access proved, be or be not a bastard?" After due consideration the Lord Chief Baron of the Court of Exchequer delivered the unanimous opinion of the Judges—"That from the facts stated in this question there is no conclusion of law that the issue is or is not a bastard; and we humbly conceive that we ought not to answer to a conclusion of fact" [36 H. L. J. 676]. In Sir *R. MacConnell's* case, 1905, the interval was twelve months and two days, and counsel were informed that such a fact was not necessarily conclusive on the question of legitimacy.

The question in such cases is always one of fact, but questions of law may arise as to the admissibility of evidence. When *Williams'* Bill, 1783, was in the House of Commons the subject and policy of bastardising clauses was discussed. Such a clause was inserted in Sir *Hyde Parker's* Act, 1799 [Macq. 590], but in *Haynes'* case, 1829 [61 H. L. J. 218], counsel were informed that bastard-

ising clauses "had not of late been introduced into Bills of this nature, there being no person in attendance to watch the interests of the child; that that must be left until the child should be of age to defend his own supposed rights; but that to prevent the evidence from being lost, and to give the petitioner the benefit he might hereafter be enabled to derive from it, the House would permit the evidence to be now received." Since the above rule was enunciated there has been one case of a bastardising clause. In *Heathcote's* case, 1851, the only evidence of adultery was the birth of a bastard child and admissions by the mother as to its paternity. Very strict proof of non-access was required. At the suggestion of Lord Brougham a bastardising clause was inserted [1 Macq. R. 277]. In *Maclean's* case, 1851, the House rejected a similar clause, because there was other evidence of adultery besides the birth of the illegitimate child. (Compare *Hewat's* case, *post*, p. 89.)

The insertion, however, of a paragraph in the preamble containing a statement that a child is illegitimate in the absence of any declaratory clause in the body of the Act, it is submitted, cannot affect the status of the child. Since the rule in *Haynes'* case (*ante*, p. 29) the fact of the birth of illegitimate children has been frequently recited in preambles, as, for instance, in the following Acts:—Col. *Cautley's*, 1850; *Cutbill's*, 1853; *Caton's*, 1854; *Wyndham's*, 1855; *Sumner's*, 1855; Dr. *Atkins'*, 1887; and Sir *R. MacConnell's*, 1905. In two of these cases—*Caton's* and *Sumner's*—the name of the real father was given. This practice appears to be based on the advice given in Mr. Macqueen's "Appellate Jurisdiction of the House of Lords, &c.," but there does not appear to be any necessity for such particulars being given unless the birth of a bastard child is relied on as evidence of adultery. There is not much advantage in inserting such paragraphs, as they cannot affect the status of the child without a corresponding section in the Act. There being no cross-examination on behalf of the child, it is very doubtful if the evidence taken on the Bill would be admissible in subsequent proceedings under the Legitimacy

Declaration Act. Such clauses merely amount to a statement as to the petitioner's non-recognition of the child, which can be recorded in the evidence without such an allegation in the preamble, and there is the drawback that they may have the effect of excluding important evidence (*post*, p. 52). Even if a clause in the Act be inserted declaring a child to be illegitimate there is no reason why such a child, on growing up and being able to disprove the evidence (by showing perjury or otherwise), could not promote a Bill to repeal the clause fraudulently obtained.

5. *Particulars of Adultery and other Charges.*

Where the husband is petitioner a charge of adultery, if proved, will entitle him to relief in the absence of any bar being proved by the respondent. If more than one charge has been proved in the divorce suit all should be alleged. As the preamble is the only notice the respondent receives of the charges made, no evidence will be allowed to be given on any other charge except those in the Bill, and if they are not substantiated fresh charges and evidence can only be brought by withdrawing the Bill and proceeding with a new one: Rev. *J. Jenkins'* case, 1775 [34 H. L. J. 357, 361]. If one charge only be proved it will be sufficient for relief. Objection has in recent years been taken in the Select Committee of the House of Commons to the inclusion of any allegations of fact that are not supported by evidence. If one charge only be proved the others will probably be struck out by that Committee. But if they are struck out by the House of Lords the petitioner will be unable to call evidence on those charges before the Select Committee of the House of Commons if the latter are not satisfied with the evidence already given in the House of Lords on the remaining charge. In *Graves'* Bill, 1894, the Select Committee reported that they amended the preamble of the Bill as regarded a charge of adultery which had not been proved to their satisfaction [149 H. C. J. 209].

These considerations will also apply to the case where the wife is the petitioner. The grounds on which (apart

from exceptional cases) relief will be granted are those defined in the Matrimonial Causes Act, 1857 (20 & 21 Vict., c. 85, s. 27) : see Mrs. *Westropp's* Bill (*ante*, p. 10).

Of these causes two consist of double offences—adultery coupled with cruelty, and adultery coupled with desertion. These require special consideration. These offences are not always committed about the same time, but adultery condoned is revived by subsequent cruelty, and *vice versa* (*ante*, p. 28). It is, therefore, on the commission of the second offence that the ground for divorce *a vinculo matrimonii* arises. But a wife may have obtained a decree of divorce *a mensâ et thoro* for one offence, say for cruelty alone, having failed to prove adultery or not having occasion to charge it. After the separation consequent on such a decree she may discover evidence of her husband's adultery committed before, or it may be after, the decree. In such a case she would already have obtained a decree *a mensâ et thoro*, and there would be no cohabitation as to which a second decree of the Court could operate. In such a case the remedy would be to proceed direct to Parliament on the analogy of the English practice and the rule in Mrs. *Westropp's* Bill (*ante*, p. 10). In similar circumstances in England the wife would be entitled to a dissolution of marriage (see *Bland* v. *Bland*, L. R. 1 P. & D. 237, and *Green* v. *Green*, L. R. 3 P. & D. 121). The law is the same in Scotland : *Ritchie* v. *Ritchie* [4 Macq. H. L. Ca. 162]. A previous decision of a Court on the second charge is not essential to give jurisdiction, for in the Duke of *Norfolk's* case, 1700, and the Earl of *Macclesfield's*, 1698, no such decisions had been given, and in the Rev. *J. Jenkins'* case, 1775 [34 H. L. J. 361, 696], the petitioner was allowed to withdraw his Bill in order to introduce fresh charges as to which no actions at law had been brought. In Mrs. *Lautour's* case, 1905, the divorce had been granted on the ground of adultery alone, as the Court had no jurisdiction to grant it on the ground of desertion.

The grounds on which a wife may promote a Bill are not necessarily confined to those mentioned in the Matri-

monial Causes Act, 1857 (per Lord Blackburn in Mrs. *Westropp's* Bill, 1887, 11 App. Ca. 297). There have been 21 Bills introduced for annulment of marriage or divorce in which the wife was the petitioner. The several grounds alleged and results are as follow:—

Mrs. *Campbell* (*née Wharton*), 1690, abduction—Bill passed (*ante*, p. 4).

Mrs. *Gooding* (*née Knight*), 1697, fraudulent marriage—Bill passed (*ante*, p. 4).

Mrs. *Addison*, 1801, on the ground of incestuous adultery—Bill passed [43 H. L. J. 55, 122].

Mrs. *Teush* (*née Utterton*), 1805, adultery alone—Bill rejected [45 H. L. J. 246, 296, 300].

Miss *Turner* (or Mrs. *Wakefield*), 1827, abduction and fraudulent marriage—Bill passed [59 H. L. J. 308, 351].

Mrs. *Buxton* (*née Hickson*), 1830, fraudulent and illegal marriage, criminal conspiracy—Bill rejected [62 H. L. J. 321, 750].

Mrs. *Turton*, 1831, incestuous adultery—Bill passed [63 H. L. J. 781].

Mrs. *Moffat*, 1832, adultery alone—Bill rejected [64 H. L. J. 217, 385].

Mrs. *Battersby*, 1840, adultery and bigamy—Bill passed [72 H. L. J. 75, 132, 137].

Mrs. *Newenham* (*née Wortham*), 1846, abduction—Bill rejected [76 H. L. J. 76, 96, 393; (2nd Pet.) 500].

Mrs. *Brown* (*née Field*), 1848, marriage through fraud and undue influence—Bill rejected [80 H. L. J. 570, 661, 685, 693; 2 H. L. Ca. 48].

Mrs. *Dawson*, 1848, adultery and cruelty—Bill dropped [80 H. L. J. 243, 489, 579, 663].

Mrs. *Hall*, 1850, adultery and bigamy—Bill passed [82 H. L. J. 473].

Since 1857 Acts have been passed on the wife's petition in the following cases; the grounds in each case, except the second last, were adultery and cruelty:—*Westropp*, 1886 [11 App. Ca. 294]; *Gifford*, 1887 [12 App. Ca. 361]; *Peacocke and Thomson*, 1897; *Hart*, 1898; *Jones*, 1899 [11 App. Ca. 348]; and *Lautour* and *Donovan*, 1905. In Mrs. *Lautour's* case the grounds were adultery and desertion.

6. *Action at Law and Divorce Suit.*

The particulars of the action at law and the divorce suit should be set out very shortly. The dates of the writ and judgment or inquiry as to damages should be given. If there has been no action the reason for the omission should be stated; so, too, if damages have not been recovered. (See *ante*, pp. 16-21.)

The dates of petition, citation, and decree in the divorce suit should be given, and it should also be stated whether service was effected personally or was substituted, and, if so, on whom.

The Clauses of the Bill.

In ordinary cases these are six in number:—(1) The short title; (2) the marriage is declared void and the petitioner enabled to marry again; (3) a husband petitioner to be entitled to be tenant by courtesy of lands, &c., of future wife, or a wife petitioner to be entitled to dower, &c., out of lands of future husband; (4) the respondent excluded from rights in or to the property of the petitioner; (5) a husband petitioner to be excluded from rights to property thereafter acquired by the respondent (no corresponding clause in the case of a wife petitioner); (6) a clause prohibiting the guilty parties from intermarrying. (See S. O. No. 176, *post*, p. 110).

The first five are in common form, and require no comment.

Frequent attempts have been made to introduce clauses prohibiting the guilty parties from intermarrying. These were only successful in those cases in which they were within the prohibited degrees of affinity—*e.g.*, Major *Campbell's* Bill, 1799 [56 H. C. J. 559], and Dr. *Campbell's* Bill, 1801 [43 H. L. J. 178]. In *Taylor's* Bill, 1801, the parties were not within the prohibited degrees, and a prohibitory clause was introduced by the Committee of the whole House, but it was negatived by the House on the Report [43 H. L. J. 70].

In 1809 the Standing Order (now No. 176, *post*, p. 110) was debated and made, and the reasons against it of dis-

sentient peers recorded in the Journals [47 H. L. J. 207, 217]. Since 1809 the clause has always been struck out except when the guilty parties were within the prohibited degrees of affinity—*e.g.*, Mrs. *Turton's* Act, 1831; the Earl of *Rosebery's* Act, 1815. In *Heathcote's* case, 1851, although the guilty parties were within the prohibited degrees of affinity, this clause does not appear in the Act. The omission is to be attributed to the fact that they were so nearly related that in no civilised country would a marriage between them be recognised.

In Major *Campbell's* case, 1799, it was expressly recited in the Act by the House of Commons that the clause was retained only on the ground that on the death of petitioner the intermarriage would have been impossible owing to the parties being within the prohibited degrees [56 H. C. J. 559].

In this connection a serious question presents itself. If a husband be divorced on the ground of adultery with his wife's sister, and the prohibition be retained, what is the position if each subsequently acquire a domicile in Australia or some country in which the law permits of marriage with a deceased wife's sister? A husband formerly domiciled and divorced in England could contract such a marriage on acquiring an Australian domicile. The Colonial Legislature may recognise such marriages, and may have exclusive jurisdiction as to legislation concerning marriage and divorce, as in Canada. Is a single British subject then domiciled in a colony to be barred by statute from contracting such a marriage? The question is not merely one concerning the individual, but the exercise of the authority of the Imperial Parliament to legislate in a particular case contrary to the legislation of a Colonial Parliament.

Provision for the Wife.

Special clauses are frequently introduced to vary settlements or make a provision for the wife, even when the guilty party. In *Daly's* case, 1768 [32 H. L. J. 79], the House noticed that no provision had been made for the wife; the petitioner's counsel was directed to prepare him-

self on the point, and both were ordered to attend before the Committee on the Bill. The result is not stated in the Journals. In the earlier cases the wife generally had brought a considerable fortune to her husband, and he was not allowed to retain this without making some provision for her maintenance: see *post*, pp. 104-6. The last case of this kind was *Baring's*, in 1857. (See *Caton's* case, *post*, p. 60.)

The practice, however, in the House of Commons went much further. The principle was adopted that, whether the guilty wife had brought any fortune to her husband or not, he was not entitled to throw her penniless on the world. In *Loveden's* case, 1811, the House of Commons inserted amendments to annul the marriage settlement and give the respondent an annuity of £400. On the return of the Bill to the Upper House, Mr Loveden presented a petition against the amendments, on the grounds that it was "against the best and dearest interests of Society" to require a husband to support a wife living in adultery. The House accepted this view, and declined to agree to the amendments, so the Bill was lost [48 H. L. J. 448, 450].

After that case the House of Commons adopted the expedient of insisting on some arrangement being made, preferably by the parties themselves, and a deed being executed to give effect thereto before passing the Bill [Pritchard on Divorce, 1864, p. 15].

This view, taken by the House of Commons, appears finally to be acted on by the House of Lords: see *Baring's* Act, 1857, and Dr. *Atkins'* Bill, 1887 [12 App. Ca. 370]. See also *Simmons'* Bill, 1845 [12 Cl. & Fin. 342]. (See cases of Variations of Settlements, collected, *post*, p. 104.)

The former practice of Parliament is the foundation of the jurisdiction as to variation of settlements and maintenance given to the High Court by the Matrimonial Causes Acts, 1857, 1859, 1860, and 1878 (20 & 21 Vict., c. 85; 22 & 23 Vict., c. 61; 23 & 24 Vict., c. 144; 41 & 42 Vict., c. 19). This view is borne out by the observations of *Jessel*, M.R., in *Robertson* v. *Robertson* [8 P. D. 94], and *Vaughan Williams*, L.J., in *Ashcroft* v. *Ashcroft* [1902, P. 270]. In the latter case the Court of Appeal decided

that a discretion was given by the Act of 1857 to the Court to make an order for maintenance of a guilty wife, and that it was not necessary that the wife should show any special grounds for the interference of the Court. But the circumstances under which provision is usually ordered by the High Court is when the wife is unable to earn her living, and would otherwise be destitute and the allowance is made subject to a *dum sola et casta* clause: *Squire* v. *Squire* [1905, P. 4], thus following the principle underlying the action of the House of Lords in *Loveden's* case, 1811 (*ante*, p. 36).

The modern practice in the House of Lords is that an allowance is ordered only when the question is raised on behalf of the wife and evidence given in support. If it were otherwise the rule might defeat its own object, for in some cases the petitioner is too poor to apply for a Bill for several years; and if he were advised that the expenses would be increased by the amount required to provide an annuity he might be compelled to delay his application for a further period, and meanwhile his wife might be in want. This state of the law shows that the question of maintenance should be dealt with at the earlier stage of the divorce *a mensâ et thoro*, for which, perhaps, legislation would be necessary.

Custody of Children.

Where a wife is petitioner it is frequently necessary to insert a clause giving her the custody of the children. This may be done in various ways, as by making them wards in Chancery—Mrs. *Addison's* Act, 1801 [43 H. L. J. 122; Macq. 598]—or by a simple enactment that it shall not be lawful for the father to remove them from the care and custody of their mother: Mrs. *Hart's* Act, 1898, and Mrs. *Jones'* Act, 1899. Where, by an arrangement between the parties, a child is left with the mother, who is a respondent, no clause will be permitted which will in any way restrict the jurisdiction of the Lord Chancellor: Rev. W. *Vanston's* Bill, 1897 (*post*, p. 92).

In exceptional cases there may be other clauses of an exceptional nature, such as one to prohibit a respondent

from using the petitioner's name or title, as the law does not afford relief.

CHAPTER IV.

The Introduction of the Bill.

Presentation and First Reading.

When the Bill is drafted it is then printed. One copy, called the House Bill, is that actually presented. This copy must be of the usual prescribed size, form, and binding, as it is preserved in the archives of the House. It is prepared under the direction of the agent. About fifty other copies will be required, which are of the usual size of Parliamentary Bills.

The Bill must be presented on petition. In former times this was substantially a repetition of the preamble of the Bill, but it was addressed to the House in the usual way, and not to the Sovereign. Now a much shorter form is used, as under Standing Order No. 150 (*post*, p. 110) it is annexed to the Bill, which is deemed to form part of it. This petition is engrossed on parchment, and must be signed by the petitioner. Where the petitioner is absent from the country, and his attendance is dispensed with, the petition is signed by his agent or some near relative, duly authorised under a power of attorney for that purpose. Such was the practice adopted when the petitioner was detained in India or at sea by his public duties—*e.g.*, *Hayes'* case, 1801 [43 H. L. J. 235]. A large number of such cases are reported in the Journals of the House.

The Parliamentary agent or solicitor in London who acts as agent for the Bill must attend at the Private Bill Office of the House of Lords, and there sign a declaration engaging that he will observe all the rules and practice and pay all the fees and charges due upon the Bill, and enter into a bond to observe the same declaration (*post*, p. 113). As soon as these formalities are complied with the agent will be directed to the room of the official with

whom he is to leave the Bill and the petition for it. The officials will give the agent, with extreme courtesy, all the advice and assistance in their power in obtaining orders and seeing the Bill through its subsequent stages.

A day and hour (usually 4 30) will be appointed for the first reading. On that occasion the solicitor who conducted the divorce proceedings in Dublin or elsewhere must attend. He must bring with him an official copy of the proceedings in the divorce suit, including a transcript of the evidence. The latter should be verified by the affidavit of the shorthand writer (see *post*, p. 55). These documents are first left with the Clerk of the Table, and, when all are in order, are presented by the solicitor on oath at the Bar of the House. When sworn he is asked what the documents are he produces, and whether they are in the same condition as when he received them from the officials in Dublin. This evidence having been given, the Bill is then read a first time.

If there is also a petition for substituted service it may be presented immediately after the first reading of the Bill, and, if convenient to the House, may be considered the following morning, provided no orders for the attendance of witnesses on the hearing of it are required. Six copies of this petition will be required for the use of the House. This course enables the solicitor to return to Ireland with the minimum of delay. But if an order is required to compel the attendance of a witness a few days must elapse, for the order cannot be issued till after the Bill is introduced, and sufficient time must be given for service of the order.

When the Bill has been read a first time the agent must obtain from the Clerk of the Table the "usual orders" and serve the same. The copy is served and the original indorsed in the usual manner. These orders are those for second reading and the attendance of the petitioner at the second reading (*post*, p. 109).

Service of the Bill and Orders.

The next step to be considered is the service on the respondent, and in some cases on other parties too, of a copy

of the Bill and the order for second reading. Unless dispensed with by the House on evidence, *personal* service is essential. The term "personal" does not mean merely by handing the documents, as distinguished from sending them by post, but service by or in the presence of some person who is able to testify to the fact that the person so served is actually the respondent named in the Bill. Strict proof will be required on this point: *Doherty's* Bill, 1813 [49 H. L. J. 565]. The difficulties involved are well illustrated in Capt. *Beamish's* case, 1877 (see *post*, p. 86). Proof of service was not required in *Howard's* case, 1794 [40 H. L. J. 101], the respondent appearing by counsel on the second reading. Service was similarly admitted in Lord *Cloncurry's* case, 1811 [48 H. L. J. 90].

The person who serves the Bill and orders on the respondent can often give valuable evidence as to the name under which he or she was passing at the time of service. In Mrs. *Hall's* case, 1850, the papers were served on the husband in Brussels by the petitioner's father, who gave evidence of the fact of the husband living with a woman with whom he had gone through a form of marriage. Similar evidence was given in *Perry's* case, 1837 [70 H. L. J. 721], and *Lee's*, 1815 [50 H. L. J. 225]. Such witnesses have frequently given evidence as to remarks made by the party on being served (*post*, p. 51). But the server should be careful to avoid asking any question or making any remarks to the party served that would tend to elicit information. Much expense may be saved if the server ask the respondent to nominate his or her solicitor and to instruct them.

The identity of the person served may be proved by proving his or her signature on the copies of the orders served: *Lingham's* case, 1804 [45 H. L. J. 197], Capt. *Beamish's* case, 1877 (*post*, p. 86).

Service of the Bill must also be made on all persons interested besides the respondent; as, for instance, when settlements are to be varied it must also be made on the trustees of the settlement, to whom notice to produce the deed must be given. The alleged adulterer is not a person interested within this rule.

Substituted Service.

Where service of documents cannot be affected personally a petition to be allowed to substitute some other mode of service must be presented to the House, and evidence given in support of it.

Nearly thirty such cases are recorded in the Journals. The simplest case is where the respondent has authorised a solicitor or some other person to act on her or his behalf with regard to the proceedings on the Bill. The order is made as soon as it is proved that the representative has authority to act. This may be done by proving a letter written by the respondent's solicitor to the petitioner's to that effect: *Hewat's* Bill, 1877 (*post*, p. 90). Where the solicitor has already acted in the divorce suit this is all that is required. In some cases the respondent's solicitor attended at the Bar on the hearing of the petition and proved his letter of instructions: *Sewell's* Bill, 1842 [74 H. L. J. 399]; in others he offered to hand in his letter of instructions for the private perusal of their Lordships, while claiming privilege for the letter; it is not then printed with the evidence: *Hoghton's* Bill, 1849 [81 H. L. J. 62], and *Gamble's* Bill, 1905. This course, however, is objectionable, for when the Bill comes before the Select Committee in the House of Commons the petitioner will be put to the expense of bringing the same or other evidence to make a case for substituted service. If the evidence as printed be sufficient the Select Committee will probably accept and act upon it.

The majority of petitions for substituted service are in cases in which the address or place of abode of the respondent cannot be ascertained. Evidence must be given to show what inquiries have been made to find out the place where the respondent is concealed. If the party was represented professionally in the divorce suit substituted service is usually ordered on such representative although he has no instructions to act further in the matter. If there be no such representative then service is ordered on a near relative, or the papers are to be left at the last known place of abode of the respondent in the United

Kingdom. The following cases belong to this class:—*Copley*, 1750 [27 H. L. J. 418, 484]; *Maydwell*, 1754 [28 H. L. J. 233]; Rev. *J. Jenkins*, 1775 [34 H. L. J. 357]; *Christie*, 1784 [37 H. L. J. 63; same case below]; *Arabin*, 1789 [38 H. L. J. 443]; Major *Campbell*, 1799 [42 H. L. J. 63]; *Thoroton*, 1799 [42 H. L. J. 152]; Mrs. *Addison*, 1801 [43 H. L. J. 55]; *Lingham*, 1804 [45 H. L. J. 51]; *Guard*, 1810 [47 H. L. J. 616]; *Dundas*, 1814 [49 H. L. J. 782, 907]; *Thomas*, 1819 [52 H. L. J. 224]; *Sewell*, 1842 [74 H. L. J. 291, 302, 399]; *Bennett*, 1852 [84 H. L. J. 155]; *Talbot*, 1856 (*post*, p. 82); Dr. *Cashel*, 1866 [98 H. L. J. 49]; *Gifford*, 1887 [12 App. Ca. 362].

In another class of cases the ground for relief is the fact that the respondent has gone beyond the seas, and although her or his address may be known, substituted service is usually ordered on the legal representative employed in the divorce suit, although no fresh instructions have been given him. Such cases are:—*Copley*, 1750 [27 H. L. J. 418, 484]; *Christie*, 1796 [40 H. L. J. 664, 670; same case noted above]; *Woodmason*, 1798 [41 H. L. J. 534]; Sir W *Abdy*, 1816 [50 H. L. J. 583, 597]; Genl. *Dyott*, 1816 [50 H. L. J. 521]; Earl of *Rosebery*, 1815 [50 H. L. J. 175]; *Sewell*, 1842 [74 H. L. J. 291, 302, 399]; Mrs. *Turton*, 1830 [63 H. L. J. 330, 757]; Mrs. *Battersby*, 1840 [72 H. L. J. 86]; *Hoghton*, 1849 [81 H. L. J. 61]; Dr. *Cashel*, 1866 [98 H. L. J. 49].

In some of the foregoing cases the respondent's legal adviser attended either voluntarily or having been ordered, and was examined as to his client's whereabouts: *Lingham's* Bill, 1804 [44 H. L. J. 633, 645, 648]; Genl. *Dyott's* Bill, 1816 [50 H. L. J. 181]; *Sewell's*, 1842 [74 H. L. J. 302, 399]; *Hoghton's*, 1849 [81 H. L. J. 62]; Earl of *Lincoln's*, 1850 [82 H. L. J. 146; and Mrs. *Lautour's*, 1905.

In recent years, in order to save expense, in cases where the respondent has gone abroad, petitions have been presented asking that the Bill and orders may be transmitted by post to some person abroad to whom the respondent is personally known, and served by such person, and that an affidavit made by such person before the proper authority abroad may be received in evidence to prove the service:

Joynt's Bill, 1888 [13 App. Ca. 741]; Dr. *Whitaker's* Bill, 1894 [126 H. L. J. 12]; Mrs. *Donovan's* Bill, 1905 (*post*, p. 100).

Up to the year 1816 it was a common, but not universal, practice to support the petition for substituted service by affidavits, read at the Bar of the House by the petitioner's agent. There was only one case of substituted service in the Irish Parliament—that of *Annesley*, 1800 [8 Ir. H. L. J. 345], and in that the evidence was given by affidavits and exhibits.

After the order has been made the agent must attend at the House for minutes of the evidence and proceedings, and have the same printed. These will be required for the House on the occasion of the second reading, and subsequently for the Committee of the House of Commons. Fifty copies, at least, should be procured.

Time for Second Reading.

After the petition for substituted service has been heard a day will be fixed for the second reading. The agent must attend on the Clerk of the Table for this purpose. Where the respondent is abroad the date will usually be fixed so as to allow time for the respondent's representative to communicate with her or him: *Matthyssen's* Bill, 1846 [78 H. L. J. 828]. In the days prior to steamboat navigation, if the respondent went to a distant country it would have been impossible to allow of sufficient time, inasmuch as the proceedings had to be carried through in a single Session; for instance, in Mrs. *Battersby's* case, 1840, the respondent was in New South Wales, and there were only three weeks between the first and second reading. He could not possibly have known of the proceedings [72 H. L. J. 75, 132].

In *Hoghton's* case, 1849, the respondent was in Calcutta, and three months was the interval between the order for substituted service and the second reading. Before the Bill was read a second time the solicitor upon whom the Bill and orders were served applied (but not on instructions) for the respondent to be allowed further time to defend. The application was refused [81 H. L. J. 343].

In *Griffin's* case, 1896, the respondent was in New York, and the interval between the petition and second reading was only fourteen days, but the letter from the respondent proved at the hearing of the petition showed that the proceedings would be undefended [1896, A. C. 134]. In *Hewat's* case, 1887, the respondent was at Diep River, in the Western Province of Cape Colony, and the interval allowed was only thirty-eight days (*post*, p. 89).

In Mrs. *Lautour's* case, 1905 (*post*, p. 97), the respondent was in New Zealand. The House required notice to be sent to him by post in addition to service on a solicitor who had been in communication with him. It was thirteen years after the divorce decree, and the solicitor had not heard directly from him for some years. Communication by telegraph was permitted, and the date of the second reading provisionally fixed. At that date evidence was given of the telegram, the reply to it, and the circumstances from which it was inferred that the reply came from the respondent. The interval was twenty-eight days. The Bill proceeded on that evidence of its purport having been communicated to the respondent.

Under special circumstances the order for second reading will be taken on an earlier day than that originally fixed, as, for instance, to enable the evidence to be taken of a commander of one of His Majesty's ships who was under sailing orders—*Bromfield's* Bill, 1779 [35 H. L. J. 697, 698]—or to examine a witness who for particular reasons would be physically unable to attend at the date fixed for the second reading, or on any subsequent date in time for the Bill to be passed in the same Session: *Sewell's* Bill, 1778 [35 H. L. J. 670].

Attendance of Witnesses.

Before the second reading the petitioner's advisers must consider if they wish to compel the attendance of any witnesses they cannot rely on to come voluntarily. As a general rule attendance is secured by an order of the House directing the witness to attend. In the case of Peers or Peeresses this is carried out by letter from the Lord Chancellor, requesting their attendance; they are sworn by

him, and they give their evidence from their places in the House: Lord *Cloncurry's* case, 1811 [48 H. L. J. 266]; Lord *Lismore's* case, 1826 [58 H. L. J. 45, 49, 92, 129]; and *Watson's* case, 1843 [75 H. L. J. 144].

Members of the House of Commons are summoned by a message to that House for leave to be given to the member in question to attend: *e.g.*, *Hill's* case, 1849 [81 H. L. J. 454]. If officials of the Board of Trade are required to attend it seems that the Lord Chancellor's letter of request should be addressed to the Privy Council and President of the Board of Trade.

If a witness be in prison the order will be addressed to the Governor to bring the prisoner to the Bar to be examined as a witness: Mrs. *Turton's* case, 1831 [63 H. L. J. 816].

Report of Action.

Before the second reading can be taken the solicitor in Dublin, in pursuance of S. O. No. 177 (*post*, p. 110), must attend at the proper office in Dublin and bespeak a report of the trial or inquiry as to damages. This report must be duly certified by the Judge, Master, or Under-Sheriff, and transmitted by him direct to the Clerk of the Parliaments, House of Lords, Westminster, S.W.

CHAPTER V.

The Second Reading.

This stage is essentially the trial of the case. Counsel address the House and call evidence. It was at times the practice to prove the service of the Bill and orders before the opening observations of counsel were made. This practice was by no means general, and is not now adopted unless there be any doubt about whether the evidence of service of the documents will be sufficient. In the latter case time may be saved by attempting to prove service first.

The object of counsel's opening statement is twofold—first, to indicate the evidence to be called in support of the charges made, and, secondly, to give the House such information as to the history of the parties as will enable their Lordships to judge whether any further inquiry into the circumstances be necessary. It must be remembered that the House not only decides on the issues between the parties, but also exercises those functions which are discharged in England by the King's Proctor.

The petitioner must attend at the second reading under Standing Order No. 178 (*post*, p. 110), unless his attendance has been dispensed with by the House: *Cunliffe's* case, 1819 [52 H. L. J. 297]. The practice, where the petitioner cannot attend, is for his agent or some near relative to obtain a power of attorney executed by the petitioner for the purpose of presenting the petition for the Bill, and of another one for dispensing with the Standing Order. The latter petition must disclose the facts of, and reasons for, the petitioner's absence. The power of attorney must be proved at the hearing of the petition, and also the facts relied on in support of it.

The Evidence.

Peers and Peeresses give their evidence from their seats in the House or at the table, whether they appear as petitioners (Countess of *Anglesey's* case, 1700, 16 H. L. J. 649) or as respondents (Duke of *Norfolk's* Bill, 1699, 15 H. L. J. 41), or as witnesses. Others give their evidence standing at the Bar next counsel.

Peers and Peeresses are sworn by the Lord Chancellor, other witnesses by an officer of the House. The practice followed is the same as in the High Court—*e.g.*, a Quaker's evidence is received on affirmation, and witnesses may object to be sworn until their expenses are paid: Sir *J. Dinely's* case, 1739 [25 H. L. J. 361, 387]; a witness may be examined as to his knowing the nature of an oath: Capt. *Edwards'* case, 1779 [35 H. L. J. 603]; leave may be given to treat one as hostile: *Hamerton's* case, 1830 [62 H. L. J. 362]; and the oath may be administered in the Chinese form; *Matthyssen's* case, 1846 [78 H. L. J. 831].

The first step to be proved is the service of the Bill and orders on the respondent or other parties served. The evidence must satisfy the House of the identity of the party served with the person intended to be served (*ante*, p. 39).

The marriage is next proved. This must be done strictly, as it is the foundation of the jurisdiction: *Mellin* v. *Mellin* [2 Moo. P. C. 493]. The usual practice is to produce and read the Registrar-General's certificate and examine the petitioner to show it is his or her marriage that is therein certified. Where this identity was not proved an adjournment was required in *Larking's* case, 1793 [39 H. L. J. 299], to permit the necessary evidence to be obtained. If the marriage took place abroad evidence will be required to prove that the ceremony was legal according to the law of the country in which it took place: *Crewe's* case, 1801 [43 H. L. J. 328]; Lord *Cloncurry's* case, 1811 [48 H. L. J. 117, 233]. If there be any doubt of the capacity to contract, or sanity of the respondent at the time of the marriage, the Bill will not be passed until the doubt be completely dispelled by evidence: *Doherty's* Bill, 1813 [49 H. L. J. 565]. If the petitioner does not give evidence, the identity of the parties can be proved by a witness who was present at the marriage, or by the handwritings in the original register: *Lefevre's* Bill, 1831 [63 H. L. J. 809], which for this purpose must be produced. The object of Miss *Hickson's* Dissolution of Marriage Bill, 1830, was to declare null a marriage alleged to have been brought about by fraud and collusion, in respect of which the repondent and others had been convicted of conspiracy [62 H. L. J. 321]. It was held that proceedings on a Divorce Bill constituted a "suit" within the meaning of section 26 of the Marriage Act, 1823 (4 Geo. IV., c. 76); and that evidence showing that the parties lived 62 miles from the church in which the banns had been published was thereby excluded [62 H. L. J. 750].

If the Bill deals with variation of settlements these must be produced, and their execution proved, and also service of copies of the Bill and order for second reading on the trustees of the settlement (see S. O. No. 152, *post*, p. 110).

The petitioner testifies shortly to the circumstances

under which cohabitation ceased. If there has been any long separation, or separation deeds have been executed, he must be prepared to give evidence and a full explanation of the circumstances attending the separation if the House desire to inquire into the matter. Such explanations have frequently been called for (see cases noted, *post*, p. 56).

Proof of Adultery and other Charges.

Evidence must be produced to satisfy the House that in fact the party charged has been guilty of the offences charged to the extent to justify the relief claimed—*e.g.*, two or more charges of adultery may be in the preamble, and only one need be proved. Precedent in this connection are useless; each case must be decided on its merits; but it is important to draw attention to certain points in connection with the admission of evidence. The transcript of the proceedings in the divorce suit is frequently referred to by the House (*Talbot's* case, *post*, p. 82), but it cannot be used in evidence except in the case of the death of a witness (*post*, p. 54). Evidence may have been received in the divorce suit that is not admissible on the Bill—*e.g.*, *Defries'* case, 1813 [49 H. L. J. 278] (see *post*, p. 91). But as it lies on the table of the House counsel may allude to its contents when necessary in their observations: *C.'s* Bill, 1849 [81 H. L. J. 366].

In Mrs. *Addison's* case, 1801, counsel proposed to put in as evidence for the wife the record of the judgment obtained against the husband by Dr. Campbell in an action for *crim. con.* with Mrs. Campbell. The House debated in private, and informed counsel that they must show that such evidence could be received [43 H. L. J. 78]. On a subsequent day counsel discussed the question, and it was decided "that the Lords were of opinion the judgment might be received, not as a matter necessary to be proved, but one that, under the particular circumstances of the case, the Lords did not object to receive" [*ibid.* 122].

Letters of the Party Charged.

Letters containing admissions of guilt have not been received in evidence except as corroborating and supple-

menting other evidence. The earliest cases establish this principle. In *Street's* case, 1793, after evidence of adultery had been given, the wife's letters were proved and admitted [39 H. L. J. 580]. In *Shadwell's* case, 1796, the wife's letters were proved, but not read until after evidence of adultery had been given [40 H. L. J. 608, 609].

In *Loveden's* case, 1811, a witness was called who testified that he had intercepted certain letters of the wife addressed to her paramour; these were put in [48 H. L. J. 177, 254], but were not entered on the minutes of evidence until the House went into Committee on the Bill [*ibid.* 294]. In this case the guilt of the lady was a matter of inference from a great variety of circumstances, and the letters were of crucial importance [2 Hagg. Con. R. 22, 23, 52.]

Logically there can be no stronger evidence of guilt than a written admission by the person charged. But such evidence tends to produce the danger of collusion; for the more frequently it is relied on the greater the temptation to persons to write such letters to facilitate proceedings for a divorce. Hence there is an important distinction between letters written to the petitioner and those written to other persons. In Lord *Cloncurry's* case, 1811, a letter in Lady Cloncurry's handwriting, addressed to her husband, and alleged to contain a confession, was tendered in evidence and objected to. The question of its admissibility was discussed by counsel on both sides, precedents of the admission of letters and confessions being referred to. After debate it was refused to admit the letter in evidence [48 H. L. J. 102, 112]. But in the same case a letter of Lady Cloncurry's addressed to his lordship's agent in Ireland was received *de bene esse* after he had been critically examined as to whether any inducements had been held out to her which might draw a confession [48 H. L. J. 233]. But it has never been the practice to admit letters as evidence whether addressed to the petitioner or other parties until the circumstances under which they were received and the charge of adultery have been substantially proved: *Dundas'* case, 1814

[49 H L. J. 912, 957]. A similar course was pursued in Rev. *J. Miller's* case, 1817. Letters from the wife to the petitioner in relation to a Chancery suit were received *de bene esse,* and after strict proof of the letters and the circumstances under which they were written had been given, they were entered on the minutes of evidence [51 H. L. J. 282, 292, 303]. In *D'Oyly's* case, 1829, letters were proved, but not read till the close of the evidence [62 H. L. J. 224, 227]. So, too, in the cases of *Carleton, Allison,* and *Pemberton* in 1839 [71 H. L. J. Ap. 634, 674, 683] and *Vere's* in 1842 [74 H. L. J. Ap. 44], a similar course was pursued. In *Boydell's* case, 1830, a witness deposed to finding a letter from the wife addressed to the adulterer in the pocket of the latter; it was disclosed to the petitioner, and discussed between him and his wife in the presence of the witness, but it was not offered in evidence nor were its contents disclosed [62 H. L. J. 687, 688]. Similarly, in *Nicholson's* case, 1848, letters of the wife to her paramour were obtained from the latter, produced, and handed in at the request of the House. After the handwriting and circumstances under which the letters came to the petitioner's knowledge were proved, they were read [80 H. L. J. 491]. Letters of the wife to her husband and to his solicitor, written when the parties were separated, were proved in *Malpas'* case, 1835 [67 H. L. J. 419]. But in *Lewis'* case, 1783, the wife gave a letter to a witness, desiring her to keep it and give it to her husband in the event of her death. After debate it was not admitted in evidence [36 H. L. J. 670].

Admissions by the Respondent.

Admissions of guilt other than those contained in letters are received under similar circumstances and conditions as letters. As part of the *res gestæ* evidence has been received of an admission made by the wife on being taxed with misconduct: *Bayntun's* case, 1783 [36 H. L. J. 633]; or of admission of guilt made to servants: *Lewis'*, 1783 [36 H. L. J. 670]; *Taylor's,* 1801 [43 H. L. J. 27]. In *Cecil's* case, 1791, evidence was given of an alleged con-

fession made to the petitioner and another person, and the witness was critically examined thereupon [37 H. L. J. 108, 109]. In Lord *Ellenborough's* case, 1830, a witness testified to statements made to her by Lady Ellenborough admitting adultery. This evidence was objected to, but counsel were informed that similar evidence had been received in other cases. The examination of the witness was resumed on the same lines [62 H. L. J. 74].

Statements *volunteered* to the person who serves the Bill and order on the respondent are sometimes proved—*e.g.*, *Williams'* Bill, 1783 [36 H. L. J. 592]; *Perry's* Bill, 1837 [70 H. L. J. 721]; and *Nicholson's* Bill, 1848 [80 H. L. J. 489]; but on no account should the person serving the papers say anything tending to induce the making of any admission: *Hallam* v. *Hallam* [20 T. L. R. 34].

In *Nicholson's* case, 1848, both letters and confessions were proved after other evidence as to the lady's conduct had been given [80 H. L. J. 503, 511].

Similar evidence has been given either after evidence of adultery or as part of the *res gestæ* in the following cases:—*Guard's*, 1810 [47 H. L. J. 676]; *Loveden's*, 1811 [48 H. L. J. 155, 253]; *Defries'*, 1813 [49 H. L. J. 250]; *Allison's*, 1839 [71 H. L. J. Ap. 677]; *Mieville's*, 1842 [74 H. L. J. Ap. 30]; *Creagh's*, 1846 [78 H. L. J. 433]; and *Llewelyn's*, 1851 (18th and 19th July).

In Rev. *E. Ashby's* case (*post*, p. 57) an admission was proved. In Mrs. *Donovan's* case, 1905, evidence was given of an admission made by the respondent to the petitioner's solicitor in the presence of his own solicitor during negotiations for a settlement of the divorce suit by a deed of separation (*post*, p. 103).

But in Col. *Bayley's* case, 1817, statements in the nature of confessions made by the respondent to her brother were not allowed to be proved [51 H. L. J. 67].

Where the husband was respondent, evidence has in some cases been given of his treating a child other than his wife's as his own. Such evidence formed part of the whole of the circumstances, as, for instance, in Mrs. *Moffat's* case, 1832 [64 H. L. J. Ap. 860, 864], and Mrs. *Lautour's* case, 1905.

Admissions of guilt by a wife, consisting in statements that a man other than the husband was the father of a particular child, have been frequently admitted as evidence of adultery: *Weston's* Bill, 1805 [45 H. L. J. 239]; *Coode's* Bill, 1839 [71 H. L. J. Ap. 628]; *Martin's* Bill, 1847 [79 H. L. J. 73]; *Matthyssen's* Bill, 1846 [78 H. L. J. 830]; *Jervis'* Bill, 1848 [80 H. L. J. 281]; and *Heathcote's*, 1851. In the last-mentioned case evidence was given of statements made by the wife to several persons as to the child being illegitimate. A bastardising clause was inserted at the instance of Lord Brougham, as there was other evidence to prove the illegitimacy. The wife's admissions must be regarded only as admissions of adultery. But in recent years, where there is any allegation as to the paternity of the child in question in the preamble of the Bill, such admissions have been rigorously excluded, although tendered—merely as evidence of adultery (*Hewat's* case, *post*, p. 91)—or in respect of a birth a year after the separation of the parties (Sir *R. MacConnell's* Bill, 1905). In each of these cases the evidence tendered had been received and acted on in the Court below; but as there was other evidence of adultery available the question of admissibility was not pressed. In this connection the case of the *Aylesford* Peerage [11 App. Ca. 1] may be referred to. In the Earl of *Lincoln's* case, 1850, a certificate was read and put in evidence; it was one of the baptism of a child given by the priest who performed the rite, in which the child was described as the son of the adulterer and the respondent. In *Caton's* case, 1854, the certificate of birth of a child given by the French Registrar was proved.

In Sir *W. Morice's* case, 1737, letters from the adulterer to the wife were produced by a postmistress, at whose house they were left, and were read as evidence [25 H. L. J. 188].

In Sir *W. Abdy's* case, 1816, certain letters of the adulterer to the respondent were in evidence in the proceedings in the Ecclesiastical Court. The originals were asked for by the House, with an intimation that evidence would be required to show how they came into the petitioner's

possession. It was proved that they were taken from the lady's portfolio. They were proved and handed in after evidence of adultery had been given, but not printed in the minutes of evidence [50 H. L. J. 622, 631].

In *Loveden's* case, 1811, a witness testified to conversations he had with the adulterer and statements made by the latter [48 H. L. J. 154, 155].

In *Hamerton's* case, 1830, certain letters of the adulterer had been found. Counsel were informed that "the House doubted whether they ought to attach any weight to the finding of the letters, as the petitioner had been proved to have been in the room before the letters were seen by the servants"; and that "letters of the adulterer had never been received in evidence to prove the adultery in this House; and that doubts had been entertained whether the letters of the wife were evidence. If counsel could trace the letters into the hands of the lady they would be evidence in this case, but that without some such evidence they could not be received." The evidence called was not satisfactory [62 H. L. J. 150-4].

In *Curtis'* case, 1846, after other evidence had been given to prove adultery, a letter of the adulterer's, found amongst the respondent's things, was proved and read [78 H. L. J. 389].

In Col. *Cautley's* case, 1850 (not reported), letters from the adulterer to the wife were found by the petitioner in his wife's box, and were proved in evidence.

Evidence of the adulterer's conduct has been given in treating the respondent's child as his own—*Coward's* Bill, 1842 [74 H. L. J. Ap. 54]—and in making arrangements for the respondent's confinement: *Carleton's* Bill, 1839 [71 H. L. J. Ap. 639]; *Jervis'* Bill, 1848 [80 H. L. J. 281]; and *Caton's* Bill, 1854.

In Dr. *Lardner's* case, 1839, the widow of the adulterer gave evidence to the effect that her husband stated that a child he brought to his house was the respondent's. Counsel was informed that "this was not evidence unless he was at that time on his death bed or believed he was dying." Counsel stated it "was merely introductory to what followed." The question was allowed, and the wit-

ness then testified to the child being treated as one of her family [71 H. L. J. Ap. 666].

Death of a Witness.

The rule in the case of the death of a witness is—after his death has been duly proved—to read his evidence as given in the proceedings in the matrimonial suit. Before 1857 the evidence in the Ecclesiastical suit was taken by examiners in the form of depositions, consisting of answers to questions previously prepared. These replies were taken down by the examiners in the presence of the witness, but oral evidence and cross-examination were unknown. The Judge decided the case on the depositions thus prepared. In *Copley's* case, 1749 [27 H. L. J. 492]; Capt. *Edwards'* case, 1779 [35 H. L. J. 604], and in *Llewelyn's*, 1851 [*The Times*, 16th July, p. 7], such depositions were read to the House—they had been already put in on oath as part of the report of the proceedings in the Ecclesiastical Court. In *Llewellyn's* case, 1851, the evidence read was corroborated by a witness who was present on one occasion alluded to and could testify as to the identity of the party mentioned in the deposition by the witness who had died. In such cases the House was in possession not of a report of the evidence given in the earlier proceedings, but of the same evidence as was before the Judge at the trial. In *Weguelin's* case, 1839, a material witness was in ill-health, and the Ecclesiastical Court appointed a special examiner to take her depositions. On the second reading of the Bill the death of the witness and the taking of the deposition were proved, but does not appear to have been read as evidence [71 H. L. J. 455 Ap. 686]. Now, since the evidence in the matrimonial suit is given orally, the report of the proceedings contains *merely a report* of the evidence, as distinguished from the evidence itself. Thus in *Griffin's* case, 1896 [App. Ca. 133], as there was no transcript of the shorthand notes, the Judge's notes had been included in the report of the proceedings in the matrimonial suit, and evidence of their accuracy was required. It would be well when the notes are transcribed in the

first instance to have an affidavit made by the reporter testifying as to their accuracy, as the case of a full report by a reporter is not distinguishable in principle from a report of the evidence taken by the Judge in the course of his judicial duties.

Absent Witnesses.

In *Martin's* case, 1793, a witness was in Paris, and sent word he was unable to attend, as he had no passport, and all able-bodied men were required to serve in the army. The petitioner endeavoured to obtain his attendance, and sent him a passport obtained from the Secretary of State for the purpose. As the petitioner heard no more from the witness, he presented a petition to be allowed to read the deposition of that witness in the Ecclesiastical Court. This was refused [39 H. L. J. 625]. In *Talbot's* case, 1856, the deposition taken in the Ecclesiastical Court of a witness who was too ill to attend the House was tendered, but rejected.

Where the circumstances of the case justify such a course the evidence of witnesses will be taken out of order or at a special sitting. Thus in *Sewell's* case, 1778, a special sitting was held in advance of the second reading in order to receive the evidence of a lady who would otherwise have been unable to give it during the Session in time for the Bill to pass [35 H. L. J. 670]. A similar course was pursued in *Bromfield's* case, 1779, to enable the evidence of a commander of one of His Majesty's ships to be taken, as he was under sailing orders [35 H. L. J. 697].

In *Crewe's* case, 1802, the Bill had been introduced a second time, and the same facts were relied on. When counsel had opened the case he was informed that he might read the evidence given on the first Bill to the several witnesses, and ask them if they still adhered to it, subject to their being examined by the House if necessary [43 H. L. J. 470]. Evidence taken on a former Bill cannot be used on a second one unless leave be given on petition; and in such cases, if new witnesses are called, an explanation will be required as to why they were not examined on the former Bill: *Thorndike's* Bill, 1829 [61 H. L. J. 467].

Evidence on a former Bill was read, leave having been granted, in *Chippendall's* case, 1850 [82 H. L. J. 142, 153].

Where the witnesses are resident in India their evidence may be taken under the provisions of the Divorce Bills Evidence Act, 1820 (1 Geo. 4, c. 101). The Speaker of either House of Parliament may issue his warrant for the examination of such witnesses, directed to the Judges of the Supreme Courts in India. The depositions when returned are read as evidence, and the Bill is meanwhile carried over from one Session to another, or from one Parliament to another, as may be necessary. These are the only cases in which Divorce Bills can be carried over from one Session to another (per Lord Brougham, in *Wyndham's* Bill, 3 Macq. R. 50).

Unsatisfactory Evidence.

If the examination of the witnesses be not satisfactory, they are frequently questioned by the House as to differences between their evidence at the Bar and that given in the matrimonial suit; that course was pursued in the following cases:—Major *Campbell's*, 1799 [42 H. L. J. 129]; *Moore's*, 1805 [45 H. L. J. 190]; Col. *Bailey's*, 1817 [51 H. L. J. 90]; *Hamerton's*, 1830 [62 H. L. J. 259].

A similar course was pursued in relation to evidence previously given in the action for *crim. con.* in the cases of Col. *Powlett*, 1809 [47 H. L. J. 279], and *Loveden*, 1811 [48 H. L. J. 173, 174]. In Sir *J. Dinely's* case, 1739, evidence was tendered of a confession of perjury by the chief witness in the *crim. con.* action. The letter of the witness alleged to contain confession of perjury and an affidavit by him to the same effect were objected to. It was ordered by the House that the letter and voluntary affidavit made by the witness before a justice of the peace—both being subsequent to the verdict—should not be admitted as evidence to contradict the evidence given by the witness at the trial and to take off the force of such verdict [23 H. L. J. 387].

Cases for further Inquiry.

If it appear during the course of the case that there is any reason to suspect collusion, connivance, or negligence

on the part of the petitioner, or his or her misconduct, the House will require the matter to be investigated. In Gen. *Dyott's* case, 1816, such an investigation was undertaken owing to an allegation of misconduct on the part of the petitioner appearing during the hearing of evidence (see *post*, p. 75). Instances in which further evidence was required occur in the following cases:—*Sullivan's*, 1825 [57 H. L. J. 1050]; *Sewell's*, *Ashton's*, and *Street's*, 1842 [74 H. L. J. App. 58, 82, 88]; *Shuldham's*, 1845 [77 H. L. J. 1079]; *Clark's* and *Matthyssen's*, 1846 [78 H. L. J. 660, 830]; *Lugard's* and *Chippendall's*, 1848 [80 H. L. J. 152, 322, 536]; *C.'s*, 1849 [81 H. L. J. 244, 82 H. L. J. 364]. Apparent negligence was inquired into in *Fisher's* case, 1853, in which the petitioner (who was a young man and a lieutenant in the army) explained that "he felt that he ought not to entertain suspicion of his wife's fidelity on an anonymous letter, as it would be an act of the grossest injustice," but as soon as he ascertained that she had not gone on a visit to her father, as she represented she had, he consulted his commanding officer and followed his advice. The Bill passed, but the Lord Chancellor observed that the petitioner showed a "want of sufficient vigour and activity" in discovering the truth.

In the Rev. *E. Ashby's* case, 1850 [unreported], the parties had been staying in Madeira, and sailed for Gibraltar. When on board ship the wife admitted her guilt to her husband in the presence of a witness. That occurred on a Sunday morning. On the following Thursday the vessel called at Cadiz, where the wife went ashore. It transpired in evidence that the parties had expressed a wish for a divorce. Counsel were thereupon required to produce evidence of sufficient vigilance on the husband's part. Evidence was given. Letters of the wife were produced, in which she spoke of her husband as a "brute." The House required that a certain witness, whose name had been mentioned, should be called as to the husband's want of vigilance when at Madeira. Evidence was given as to the conduct of the parties when there and as to the circumstances under which they sailed with the adulterer in the same ship. Ultimately the Bill passed.

In Major *Rushbrooke's* case, 1853 [unreported], the damages were assessed at £3,000, but were not paid nor demanded. Evidence was given as to the conduct of the action at law and the inquiry as to damages, as unkindness and low conduct had been alleged against the petitioner. Evidence was given as to the excuses given by the defendant for not paying the damages and of the petitioner's conduct and treatment of his wife. The House required more evidence to be called as to the steps taken by the petitioner to trace his wife after she had left him. The explanations were satisfactory and the Bill passed.

The investigations or requisition for further evidence in the foregoing and other cases were required by the House of Lords on its own initiative. In the English Court, in cases in which the circumstances or evidence disclose a case for further inquiry, the Court refers the matter to the King's Proctor. When that official brings the case again before the Court the case is again considered in the light of fresh evidence. This second examination is analogous to the examination which the House of Lords initiates when necessary. In such cases it is the duty of counsel and agents for either party to assist the House by procuring the evidence required and conducting the examination and cross-examination of the witnesses.

Intervention of Third Parties.

If it be necessary to elucidate the facts of a case third parties will be allowed to appear and produce evidence. In *Jenyns'* case, 1729, there was granted the petition of the alleged adulterer that he might be permitted to give evidence and call witnesses; but he did not avail himself of the permission, nor did he appear at the hearing, although ordered to attend by the House [23 H. L. J. 490, 495]. In Major *Campbell's* case, 1779, the alleged adulterer came forward as a witness for the wife and denied the allegations made against her and him [63 H. L. J. 156].

In *Bayntun's* case a witness was, at his own request, examined by the House in order to prove a case of collusion [36 H. L. J. 636, 641, 648].

It is the duty of counsel to assist the House by examin-

ing such witnesses as the House calls on its own initiative: *Jackson's* Bill, 1842 [74 H. L. J. Ap. 71]. In *Mathew's* case 1744, the paternal uncle and presumptive heir to the respondent was allowed to be heard by counsel at the second reading, as he was advised that doubts might arise as to his interests according to the wording of the Bill [26 H. L. J. 444, 452]. In *Jackson's* case, 1842, a witness was called (on the application of the adulterer's father) to correct other evidence [74 H. L. J. Ap. 81]. Now, under the Standing Order No. 152 (*post*, p. 110), any person interested in the Bill must have a copy of it and notice of the second reading.

In *Talbot's* case (*post*, p. 82) counsel representing and instructed by the respondent's relatives were heard as well as counsel instructed by herself.

The Wife's Costs.

It has always been the rule that the husband must provide a sufficient sum to enable the wife to make her defence to the Bill, but the House must be informed of the nature of the defence to be set up: Dr. *Atkins'* Bill, 1887 [12 App. Ca. 365]. The usual practice is for the wife to present a petition setting forth the circumstances in which she is situated, and asking for the order to be made. But it may be made on the husband's petition, and where the probable amount has been ascertained by the respective solicitors, and agreed to, this seems to be the preferable course to adopt. In Sir *John Dillon's* case, 1701, the husband, by petition, asked leave to pay his wife's costs, and an order was made thereupon that he do so [16 H. L. J. 647]. The precedent thus established was followed in the cases of *Jermyn*, 1706 [18 H. L. J. 204], and *Loggin*, 1714 [19 H. L. J. 675], in which ten guineas was the sum ordered on the wife's petition.

In Sir *John Rudd's* case, 1733, the husband was ordered to lodge a sufficient sum with the clerk assistant of the House [24 H. L. J. 206, 208]. This precedent was followed in Sir *John Dinely's* case, 1739, as Lady Dinely was confined in prison for debt, and had no means. The sum of £30 was at first lodged with the clerk assistant, and a peti-

tion to have this amount increased was refused [25 H. L. J. 361, 372]. Subsequent orders for payment were made, and finally her bill of costs for £230 was taxed by a Master in Chancery and ordered to be paid [*ibid.* 411].

In Capt. *Moreau's* case, 1755, after the agents on both sides were heard, a sum of £20 was ordered to be paid to the wife forthwith [28 H. L. J. 313], and in Capt. *Edwards'* case, 1779, the amount was £30 [35 H. L. J. 597].

But the allowance has not always been granted. In *Rybot's* case, 1790, the wife's petition was rejected after the evidence of the agents on both sides had been taken [38 H. L. J. 551, 556]. In the case of *Dundas*, 1814, the lady's counsel did not make out a satisfactory case for opposition to the Bill, and her petition for costs was not granted [49 H. L. J. 1009].

In General *Dyott's* case, 1816, a sum for costs was ordered to be paid by the trustees of the settlement [50 H. L. J. 597, 602].

In *Lee's* case, 1815, the respondent presented a petition setting forth that she was too poor to employ solicitor or counsel, and alleged cruelty [50 H. L. J. 51]. An order was made for payment of £50, the balance to be returned, and with liberty to apply for more if necessary [*ibid.* 57]. The husband replied by alleging that he was without means, and that his wife had separate estate, and was then living in adultery [*ibid.* 63]. The lady's solicitor was examined as to costs incurred, and an order was made that the costs incurred up to date were to be paid [*ibid.* 130, 140].

In *Llewelyn's* case, 1851 [83 H. L. J. 373], and in Dr. *Atkins'*, 1887 [12 App. Ca. 365], the sum ordered was £30; in *Campbell's*, 1857, it was £50 [89 H. L. J. 33, 38, 57].

In *Simmons'* case, 1845, the wife had no means whatever, and had been thrown on the parish by her husband. She was permitted to appear in person at the Bar; she cross-examined witnesses, made a statement on her own behalf, and called witnesses [77 H. L. J. 510, 563, 658]. The Bill was rejected on account of the gross neglect and desertion of the husband [12 Cl. & Fin. 339].

In *Caton's* case, 1854 [not reported], the wife petitioned

for a sum to be allowed her for her defence. The husband proved that his wife was living with her mother, a lady of property, and had means; but said that he was quite ready to make an advance if the House desired it. Counsel were informed that "the case should proceed, and if in the course of the proceedings it should appear that the petitioner ought to advance a sum of money they should call on the petitioner to do so." All the property comprised in the marriage settlement had been the wife's or her mother's, and the petitioner had obtained considerable sums of his wife's, and applied them to his own purposes. Evidence was also given that the petitioner was in debt, and for want of means could not bring his Bill at an earlier date, the evidence of adultery having been obtained in 1845. An application was made for provision for the wife in consideration of all the petitioner had received out of her property. No order was made in respect of this application, or as regards her costs; nor was the settlement varied by the Act.

Proceedings in Forma Pauperis.

If the petitioner have no means he will be allowed, on presenting a petition reciting the facts of the case and proving them, to proceed *in forma pauperis*: *Chippendall's* Bill, 1847 [80 H. L. J. 20, 46]. The fees of both Houses are remitted, and counsel act gratuitously [*ibid.* 322 and 105 H. C. J. 563]. In that case the action at law was not brought *in forma pauperis*, although the petitioner had no means, because his attorney was advised he had a clear case, and the defendant was good security for costs. The usual declaration as to want of means and counsel's certificate as to the nature of the case should be annexed to the petition: *Jones'* Bill, 1853 [85 H. L. J. 121].

CHAPTER VI.

Rejection of Bills.

In all Divorce Bills the case has been tried in the previous matrimonial suit, and usually, where the husband is petitioner, the wife's adultery has been established also in an action at law. Still a large number of Bills have been rejected. It is seldom that the rejection is due to failure to prove the adultery charged, but in most cases it is due to acts and conduct of the husband that constituted a bar to relief (see *post*, p. 106). As instances the cases mentioned below may be referred to, but the list is not exhaustive. Cases in which the wife was the petitioner, and the rejection of her Bill was due to insufficiency of the grounds for relief, have already been noted *ante*, p. 33.

In the following cases the evidence that the House received was insufficient to prove the adultery:—*Haynes*, 1762 [30 H. L. J. 185]; Rev. *J. Jenkins*, 1775 [34 H. L. J. 361]; *Lewis*, 1783 [36 H. L. J. 670]; *Hoar*, 1802 [43 H. L. J. 446, 450, 458]; Col. *Powlett*, 1809 [47 H. L. J. 277, 279, 303, 309].

In *Doherty's* case, 1813, the Bill was rejected because the sanity of the wife at the time of her marriage was not proved [49 H. L. J. 565, 568].

In *Taafe's* case, 1819 [52 H. L. J. 70], the evidence showed that the husband's conduct and his apparent inattention to his wife's conduct was not satisfactory. Proof was asked of the payment and *bonâ fide* retention of damages [*ibid.* 80, 114, 161]. Counsel were asked if they had additional evidence, and were informed "that in many cases where there was extreme negligence on the part of the husband, as distinguished from collusion, though the Courts of law might award damages, and the Ecclesiastical Court might grant a divorce, this House, consistently with its usual practice, would not grant the relief which was prayed"; the circumstances requiring explanation were specified, and counsel were further informed that the petitioner must state what inquiries he had made, and

"how far he can show himself to have been a husband acting with due care and caution, and entitled to the relief granted only to persons so acting" [*ibid.* 209, 210]. A medical certificate was, on a subsequent day, put in to prove the petitioner was unable to attend, but his attendance was not dispensed with [*ibid.* 227]. The House found that the adultery was fully proved, but intimated that explanation was not forthcoming of the fact that persons in attendance on the lady did not inform the petitioner of what was going on, and that the petitioner must appear in person at the Bar [*ibid.* 297]. The second reading was adjourned several times, and the Bill was dropped.

Neglect of the wife, by leaving her without means, was the cause of the rejection of the following Bills:—Capt. *Moreau's*, 1755 [28 H. L. J. 313]; *Simmons'*, 1845 [77 H. L. J. 658; 12 Cl. & Fin. 339]; *Llewelyn's*, 1851 [1 Macq. R. 280]; and *Batley's*, 1852 (*post*, p. 80).

In *Miller's* Bill, 1821, the evidence was taken in the Ecclesiastical Court in a manner that was unsatisfactory. No questions had been asked as to the parties occupying different rooms after the husband's discovery of misconduct. But such evidence was given at the Bar of the House. Counsel, on proposing to call the Judge of the Ecclesiastical Court as a witness, was informed that his evidence could not be admitted. On a subsequent day the evidence given by a witness at the inquiry for damages was read, from which it appeared the parties lived in the same house for two or three days after the discovery of adultery. The Bill was dropped [54 H. L. J. 141, 356, 364]. In Lord *Cloncurry's* case, 1811, the explanation as to the circumstances under which the lady was allowed to remain in the house after discovery of her adultery was considered satisfactory [48 H. L. J. 266].

Worrall's case, 1824 [56 H. L. J. 243, 313, 367], was clearly one of condonation and connivance.

Connivance of the petitioner at the misconduct of his wife is a bar to relief. In *Defries'* case, 1813, the evidence pointed to connivance, and judgment in the action at law had gone by default [49 H. L. J. 247]. The petitioner

was unable to explain the circumstances, as the declarations of his wife, which were admitted in the Ecclesiastical Court, were inadmissible in the House; the Bill, therefore, was withdrawn by leave [*ibid.* 278].

Connivance, or neglect of the petitioner in relation to the conduct or acts of his wife, was the cause of rejection of the following Bills:—*Nash's*, 1787 [37 H. L. J. 639-641]; *Cope's*, 1801 [43 H. L. J. 154, 178]; *Crewe's*, 1802 [43 H. L. J. 480, 499]; *Calcraft's*, 1831 [63 H. L. J. 422, 463, 898]; *Perry's*, 1838 [70 H. L. J. 725]; and *Bennett's*, 1852 (*ante*, p. 78).

Collusion in obtaining the decree in the matrimonial suit, or in obtaining the verdict in the action at law, or in relation to the promotion of the Bill, was the cause of rejection of Bills in the following cases:—Capt. *Moreau*, 1729 [23 H. L. J. 495, 497]; *Chisim*, 1779 [35 H. L. J. 561, 570]; Capt. *Edwards*, 1779 [35 H. L. J. 594, 618]; *Downes*, 1782 [36 H. L. J. 434]; *Cope*, 1801 [43 H. L. J. 154, 178]; *George*, 1836 [68 H. L. J. 275; and *Jones*, 1853.

Sir *J. Dinely's* Bill, 1739 [25 H. L. J. 376, 387], was rejected on account of his cruelty. In the case of Major *Bland*, 1808 [46 H. L. J. 700], the cause of rejection was the adultery of the petitioner. In Mrs. *Dawson's* case, 1848, the evidence as to the mode of life of the petitioner was not satisfactory [80 H. L. J. 579, 663].

Another ground for rejection is a separation for inadequate cause, or the petitioner ceasing to control the mode of life of the wife—*Esten's* Bill, 1798 [41 H. L. J. 485, 7]; *Barttelot's* Bill, 1799 [42 H. L. J. 72]; *Woodcock's* Bill, 1802 [43 H. L. J. 463]; *Barker's* Bill, 1825 [57 H. L. J. 554, 584; 58 H. L. J. 330]; *George's* Bill, 1836 [68 H. L. J. 275]; and *Llewelyn's* Bill, 1851 [1 Macq. R. 280].

There have been many cases in which Bills have passed notwithstanding a separation of the parties (see *post*, p. 106).

The practice established by the above-mentioned cases has been embodied, as regards England, in sections 29, 30, and 31 of the Matrimonial Causes Act, 1857 (20 & 21 Vict.,

c. 85). In *Symons* v. *Symons* [1897, P. 175] the learned President expressed his view as follows:—

> "I am much influenced by observing the course which the House of Lords pursued in dealing with petitions for divorce before the Act of 1857, and the language of that and a subsequent Act. Before the Act of 1857 there was a remarkable difference between the view taken by the Ecclesiastical Courts and that acted on by the House of Lords with regard to the effect of a husband's conduct having been the cause of the adultery which he complained of in his wife. It is not too much to say that unless corrupt connivance were proved, the Ecclesiastical Court considered that no conduct of the husband conducing to his wife's adultery barred his right to relief." The learned President referred to *Phillips* v. *Phillips* [1844, 1 Rob. 144] and *Moorsom* v. *Moorsom* [1793, 3 Hagg. 87], and continued:—"The course taken by the House of Lords was very different. The conduct of the husband petitioning was always inquired into with care. In several instances neglect or a want of due care and caution prevented the petitioner obtaining the relief which he sought" (citing instances). "Indeed, the mere fact of a voluntary separation was held to call for explanation, and Bills were repeatedly rejected when no adequate reason for the separation was shown" (citing instances). "I cannot doubt that in inserting the concluding words in s. 31 of the Act of 1857 the Legislature proposed that in cases of dissolution the practice of the House of Lords should prevail over the practice of the Ecclesiastical Courts, and that it was intended emphatically to assert that a husband ceased to be entitled to complain of his wife's infidelity if his own misconduct had conduced to it."

In *Constantinidi* v. *Constantinidi* [1903, P. 258] the learned President referred to the above case, and said:—

> "I came, then, to the conclusion, to which I now adhere, that the intention of the Legislature was to correct the over-rigid procedure of the Ecclesiastical Courts, and in preference to follow the more elastic and juster procedure of the House of Lords; and, with this intention, they conferred a discretion on the Divorce Court, without imposing specifically any limitation or any directions with regard to its exercise."

Reference may also be made to Lord Cranworth's remarks in *Lautour* v. *The Queen's Proctor* (10 H. L. Ca. 701).

The correctness of the view of the learned President is apparent from the observations of the Lord Chancellor and the action of the House in Rev. *W. Vanston's* Bill, 1897 (*post*, p. 93). Hence in cases where any bar to relief is alleged, the precedents in the English Court since 1857 may be referred to.

Grounds for Opposition.

The grounds upon which a Bill may be opposed may be classified as follow:—

(1) Denial of the facts alleged in the preamble as grounds for relief.

(2) Proof that the petitioner is barred from relief by his or her misconduct, including cases which do not come under the Ecclesiastical Law now administered by the Irish High Court.

(3) That the wife being respondent would be left without means of support.

The usual order made for the second reading of the Bill provides for the respondent being heard at the Bar. No notice of opposition is required, so the petitioner's advisers should be prepared to contest the case, if opposed, on any of the above-mentioned grounds. If the defence is one that was not raised in the Court below, the respondent may be required to account for the omission. It would be a sufficient explanation to show that the circumstances relied on as creating a bar to relief were not such as would be considered under the former Ecclesiastical Law. The existence of such circumstances accounts for the comparatively large number of Bills that have been rejected in former years.

Where opposition is made for the purpose of obtaining a provision for the wife, or custody of children, the parties are given an opportunity of arranging the matter between them. If an agreement be come to, counsel draft a clause to give effect thereto, and it is considered and amended, if necessary, by the House when in Committee on the Bill.

The cases are not precisely the same when there are settlements and when there are none. In the former case the House has cognisance of the matter when variations are proposed by the petitioner in the Bill, and may enquire into the adequacy of the proposed arrangement. It has sometimes occurred that of the two parties the wife, when respondent, is the more anxious that the Bill should pass. In such a case an intimation has been given to her advisers that if the Bill be amended in her favour it will be

dropped; this has the effect of preventing opposition on that ground. This state of affairs is most unsatisfactory, and is an additional argument in favour of giving jurisdiction to deal with questions of maintenance to the Irish High Court. In the English Court questions of maintenance are dealt with after the decree has been obtained (see *ante*, pp. 6, 8). But it must be remembered that the final word in such a case does not lie with the petitioner, as the Bill cannot be withdrawn without the consent of the House. Should justice require it, the Bill may be proceeded with on the application of the respondent and against the wishes of the petitioner. Mrs. *Dyott's* Bill (*post*, p. 76) is an example of this.

In the absence of any settlements, or any proposal to vary settlements, the initiative is with the wife. Although it is not necessary to give notice of the nature of the application about to be made, it is advisable to do so in order that the House may be fully informed of the facts and may be in a position to deal with the matter without adjournments. Notice in such cases has frequently been given by means of a cross-petition to the House, lodged with the Clerk at the Table some time previous to the date fixed for the second reading.

Committee Stage and Third Reading.

After the second reading the agent must attend on the Clerk of the Table and arrange for the Committee stage. If any amendments are to be proposed they should on this occasion be submitted to him. Copies of the minutes of evidence and proceedings must be obtained and printed; fifty will be required.

The House on another day goes into Committee on the Bill and make such amendments as are considered necessary. It is then reported to the House, and read a third time in due course.

Another House copy of the amended Bill must be printed and lodged with three other copies in the office.

CHAPTER VII.

Procedure in the House of Commons.

First and Second Readings.

When the Bill is sent to the Commons it is read a first time as a matter of course.

The agent must attend at the Private Bill Office and sign the roll of Parliamentary Agents.

He must give one clear day's notice in writing at the Private Bill Office of the day proposed for the consideration of the Bill (S. O. 239).

When the Bill is read a first time it will be ordered to be read a second time.

Three copies of the Bill should be lodged at the Private Bill Office, twenty at the Vote Office, and six at the Committee Office.

The agent must give three clear days' notice in writing at the Private Bill Office of the day proposed for the second reading. This notice cannot be given sooner than the day after that on which the Bill has been ordered to be read a second time (S. O. 235).

The earliest day on which the Bill can be read a second time is three clear days after the first reading (S. O. 204).

The maximum period allowed between the first and second reading is seven clear days (S. O. 204); consequently, notice for the second reading must be given at latest on the fourth day after the first reading.

The agent must also obtain at the Private Bill Office an order to have the name of his firm put on the Lobby List, which gives the agent access to the Lobby, and is necessary to enable him to get his Bill marked.

Reference of the Bill to Committee.

A Select Committee on Divorce Bills of nine members is appointed for the Session on the occasion of the first Bill being introduced (S. O. 189, *post*, p. 114). To this Com-

mittee each Bill is referred after the second reading. An order of the House is then made "that a message be sent to the Lords to request that their Lordships will be pleased to communicate to this House copies of the minutes of evidence and proceedings, together with the documents deposited in the case" of the Bill in question.

Another order is made "that it be an instruction to the Select Committee on Divorce Bills that they do hear counsel and examine witnesses for . 's Divorce Bill, and also that they do hear counsel and examine witnesses against the Bill if the parties concerned think fit to be heard by counsel and produce witnesses." But in practice in undefended cases it is the agent who attends before the Committee, and reads to them the minutes of evidence or portions thereof in support of the case for the Bill.

The Lords immediately communicate the minutes of evidence and proceedings, with a request that the same may be returned.

Service of the Bill.

Service of copies of the Bill and above orders, and of the appointment for the sitting of the Committee upon the respondent, must be effected personally, unless leave has been previously obtained to effect some other mode of service. Where such leave is required the agent must attend on the Clerk to the Select Committee and arrange a date for the application to be made to the Committee. He then procures prints of the following documents:—The Bill, the minutes of proceedings and evidence on the application for substituted service in the House of Lords, the minutes of proceedings and evidence on the second reading in the House of Lords, the order made by the Lords for substituted service, and the order which the Committee will be asked to make.

A copy of each of these documents must be furnished by the agent to each of the nine members of the Committee at their respective residences. This must be done two days before the sitting of the Committee. The Committee Clerk gives one day's notice of the meeting to each member.

The agent must attend before the Committee and explain the nature of the application. He may read from the proceedings and minutes of evidence given in the House of Lords. If necessary or required he may call further evidence. (See notes of cases, *post*, pp. 96-100.)

He should also have for use of the Committee at the hearing more copies of the documents served on the members in case they have not brought their own copies with them.

In some cases the respondent has been served personally in a foreign country with copies of the Bill and orders in the proceedings in the House of Lords, and has subsequently appointed an agent or instructed a solicitor in England. In such cases the applications should be made to serve the agent, and must be supported by evidence. In *Trower's* case, 1831, the lady had been served in Paris, and informed the person who served her that she had a solicitor acting for her. On proof of that fact substituted service was ordered to be made on her solicitor [86 H. C. J. 482]. In *Mieville's* case, 1842, the person who served the lady in Germany with the original Bill proved he had done so. Her agent attended and proved he had instructions to act for her. Substituted service on him was then ordered [97 H. C. J. 220]. The cases of *Todhunter*, 1843 [98 H. C. J. 356, 373]; *Waldy*, 1849 [104 H. C. J. 136, 144]; and the Earl of *Lincoln*, 1850 [105 H. C. J. 423], were similar.

In *Grant's* case, 1840, the Bill and papers in the House of Lords had been served personally on the lady in London. She did not appear in that House, and her address could not be obtained. A petition was, therefore, presented for service to be substituted on the solicitor who had represented her in the divorce suit. An attempt was made in the House of Commons to have an order made to summon the solicitor, but this was refused, and substituted service on him was ordered [95 H. C. J. 476, 481].

After the order for substituted service has been made the agent must serve the Bill and notices in compliance with the order. If no application for substituted service has been made then personal service (as in the proceedings in the House of Lords) on the respondent is necessary.

Notices to the Committee.

Prints of the minutes of the proceedings and evidence on the application for substituted service must next be obtained. These are to be supplied to the members of the Committee two days before the day appointed for the adjourned sitting, and to be delivered at their respective residences as before mentioned.

Two clear days before the meeting of the Committee a "filled up" Bill, signed by the agent, as proposed to be submitted to the Committee, must be deposited in the Private Bill Office. In a case of opposition, if the promoter desire to make any amendments, copies of them must be furnished one clear day before the meeting if the respondent apply for them [S. O. 237].

If there has been no petition for substituted service then two clear days before the sitting of the Committee the other documents mentioned *ante*, p. 69, must be served on the members of the Committee as there stated.

Evidence.

At the sitting of the Committee the agent must either prove personal service of the Bill and orders on the respondent or substituted service, as the case may have been. There must then be produced to the Committee the copies of the proceedings and judgment in the action at law and the proceedings in the divorce suit. In cases in which proceedings have been taken in India these records will be embodied in those returned from the Indian Courts in pursuance of 1 Geo. IV., c. 101.

If no judgment in an action at law was obtained a satisfactory explanation of the omission must be given to the Committee (S. O. 190, *post*, p. 114).

In the case of opposed Bills the preamble must be proved by oral testimony. The proceedings will be conducted according to the strict rules of evidence. The hearing will be precisely similar to a trial in the High Court before a Judge without a jury.

The attendance of witnesses can be secured by means of an order of the House, and the Speaker issues his war-

rant accordingly—*e.g.*, Mrs. *Turton's* Bill, 1831 [86 H. C. J. 795], and *Trelawney's* Bill, 1819 [74 H. C. J. 314, 323].

In former times undefended cases had to be proved in like manner. But in *Allison's* case, 1839, the agent omitted to bring any witnesses, as they resided at a distance from London, and he thought such a course was not necessary. The Committee required proof of the service of the Bill on Mrs. Allison, and ascertained that she did not oppose it. They then considered the evidence given in the House of Lords, and made a report of the proceedings to the House. The House approved of their action, and read the Bill a third time [94 H. C. J. 381, 388]. The modern practice in undefended cases was in this way established.

In the following year a Standing Order (No. 191, *post*, p. 114) was made requiring the attendance of the petitioner in all cases in which he or she attended in the House of Lords upon the second reading of the Bill. The object of that order was to enable the Committee to have an opportunity of making enquiry in cases of suspected collusion; it had no reference to giving evidence in support of the Bill, as it was not until 1869 that the petitioner became competent as a witness. His evidence is not, therefore, essential to the passing of the Bill. If the petitioner's attendance was excused in the House of Lords (*ante*, p. 46), he or she need not attend before the Committee. But if, having attended before the House of Lords, the petitioner cannot attend without much inconvenience the Committee, an application should be made to the Committee to dispense with his attendance. If the Committee agree, it can be done by a member of the Committee moving the House to suspend the Standing Order.

In undefended cases the agent reads to the Committee from the official copy of the evidence given before the House of Lords such passages as he thinks proper in support of the case for the Bill. The Committee may, however, require other portions of the evidence to be read or additional evidence to be called. (See *ante*, p. 31.)

When the Bill is before the Committee the wife has a further opportunity for making an application with regard

to settlements or other provision for her maintenance. This was done in former times by amending the Bill—*e.g.*, *Loveden's* Bill, 1811; Mrs. *Dyott's* Bill, 1816 (*post*, p. 76); and Sir *E. Owen's* Bill, 1817. Then, for a long period, it was customary for some member, distinguished for his attention to the private business of the House, to take upon himself the duty of seeing that the husband petitioning for a divorce made some suitable but moderate provision for the divorced wife. He was known as "The Ladies' Friend," and on all occasions took care that the provision was legally secured to the wife before the Bill passed through the Committee (see Final Report of Divorce Commission, 1853, Art. 31). The position thus taken up by the House of Commons was subsequently adopted by the House of Lords (*ante*, p. 36), and, as regards England, was finally embodied in the Divorce and Matrimonial Causes Act, 1857. The precedents of the English Court, therefore, serve as a guide in making any application. But owing to the change in the action of the House of Lords such applications will rarely be necessary, as the matter as a rule will have been dealt with by that House at an earlier stage.

Subsequent Proceedings.

After the proceedings of the Committee are closed the agent must obtain and print copies of the minutes of the proceedings before the Committee.

He then gives notice of the third reading at the Private Bill Office. He must attend at the third reading, and get the Bill marked in the Lobby. It is then read a third time, and is returned to the House of Lords.

The agent must then attend at the Private Bill Office of the House of Lords and there lodge a "correct amended Bill," signed by him, and also a plain copy.

He attends finally at the House of Lords on the occasion of the Bill receiving the Royal Assent, when the marriage is finally dissolved.

ABSTRACTS OF ILLUSTRATIVE CASES NOT ELSEWHERE REPORTED.

1816—GENERAL DYOTT'S BILL.

Recitals of settlements—Wife's petition for provision—Trustee examined, and ordered to advance money—Evidence as to conduct and settlements not to be given independently—Rebutting evidence allowed—Inquiry as to petitioner's conduct—Amendments as to settlements.

THE preamble of the Bill recited (*inter alia*) the marriage settlement, by lease and release dated 10th and 11th January, 1806. The chief provisions of it were:—Recitals that Mrs. Dyott's fortune consisted of one undivided one-fourth share in certain freehold properties in Ireland and the West Indies and of one-fourth share in the stock of cattle and negroes on the said West Indian estate, and in £6,000 in Government securities. That property was settled on the following trusts:—An annuity of £800 per annum to be paid Mrs. Dyott half-yearly for her sole and separate use. A power to Mrs. Dyott to raise the sum of £10,000 by creating charges on the estates for any purpose she might think fit. A similar power was given to General Dyott with respect to a sum of £5,000. Subject to the foregoing provisions the property was held upon trust for the use of General Dyott for life, then for Mrs. Dyott for life. There were the usual powers of appointment to the parties by deed or will to be exercised in favour of the children of the marriage, and if there were none then in favour of other persons.

There was also recited in the preamble a further settlement by the husband of £4,184 upon the same trusts.

The Bill contained clauses to the following effect:—(1) To annul and make void the wife's annuity of £800 and all the powers given her by the settlement. (2) To make void Mrs. Dyott's power to charge the estate with the sum of £10,000. (3) The power of appointment given to the husband in the event of his surviving his wife to be accelerated. Then followed a proviso—(4) "Provided always that all provisions, uses, trusts, powers, declarations, clauses, agreements, matters and things contained in the said recited indenture of settlement any or either of them for the benefit of the said William Dyott (or of the said Elinor Dyott) or of the children of the aforesaid marriage, or any of them or any other person or persons whomsoever (except such provisions for the benefit of the said Elinor Dyott as are herein before made

void) shall be of the same validity, force and effect, as if this Act had not been passed, and the same shall and may take effect according to the true intent and meaning of the said indenture respectively in such and the same manner as if the marriage of the said W. D. and E. D. had been dissolved by the death of the said E. D."

The Bill concluded with a clause to accelerate the power to the husband to charge the estates with £5,000 and to enable him alone to exercise the powers given to them jointly by the settlement.

Mrs. Dyott presented a petition that some provision should be made for her, as she would, by the Bill, be deprived of all her fortune, and be left destitute [50 H. L. J. 583]. And by a second one in which she alleged that her annuity of £800 had been withheld, and that she was without means to make her defence, she prayed that her husband be ordered to pay her a sufficient sum to enable her to make her defence [*ibid.* 591]. A counter-petition was presented by the husband denying that any money had been withheld from her, and stating that the trustee was willing to make her an advance on account of payments to be shortly due. The petitions were considered, and the trustee of the settlement was called in and examined. It was ordered that the lady do apply to the trustee for an advance [*ibid.* 597, 602].

During the hearing of the 7th May, in reply to an enquiry about the production of an original document, the lady's counsel submitted :—" That the Bill comprised two material points, the one seeking to dissolve the marriage contract and the other the utter abrogation of Mrs. Dyott's settlement and all provision for her ; and that he cross-examined the witness to that part which would show that those marital comforts, for the loss of which the petitioner sought to be indemnified, had ceased to exist ; but that if it was the pleasure of the House he would reserve the evidence till the settlement came under consideration in the Committee." Counsel was thereupon informed " That if he proposed to give any further evidence proving the misconduct of the petitioner it must be given now as applying not only to the settlement, but to the question whether the petitioner was entitled to a divorce " [*ibid.* 585].

As the hearing at the Bar proceeded the House asked for evidence to show the terms on which the parties lived before the adulterer came. It was called. As it transpired that allegations of complaints of the petitioner's conduct with servants had been made, the House required that the matter should be followed up, and more evidence called [*ibid.* 633].

On a complaint being made by the wife that no allowance had been made to her, the trustee of the settlement was again examined and ordered to pay her a sufficient sum forthwith [*ibid.* 634, 640].

A petition was presented on behalf of a solicitor from Dublin

who was the witness to prove the marriage register and the settlements, showing that he had been detained three weeks from his business. He was then called, gave his evidence, and was released from further attendance [*ibid.* 641, 643].

A number of witnesses were called in following up the enquiry required by the House. Evidence was given of proceedings having previously been taken by Mrs. Dyott against her husband for adultery, and having been discontinued [*ibid.* 664, 672].

Evidence was also given of statements made during negotiations for a deed of separation between the parties [*ibid.* 688].

At the hearing on the 12th June the petitioner's counsel proposed to call rebutting evidence. Counsel for Mrs. Dyott submitted "That the counsel for the Bill could not now go into evidence, the case which he had made not being new to the petitioner for the Bill." Counsel were informed that the evidence was receivable, and counsel for the Bill was directed to proceed with his case [*ibid.* 702].

An exhaustive enquiry took place as to the alleged adultery of the petitioner. The case against him on that issue was disproved completely [*ibid.* 730].

In Committee the Bill was amended. The clauses relating to annulling the lady's settlement and the powers granted to her—(1) and (2) above—remained. The acceleration of the husband's power of appointment (3) was struck out. The power given to the petitioner to charge the estates with a sum of £5,000 was made void. The proviso (4) was amended by striking out the words "or of the said E. D." and substituting for the words in brackets the following "(except such powers as aforesaid as are hereby declared to be void)." The concluding clause accelerating the power of the husband to charge the estates with the sum of £5,000 and to enable him to exercise alone the powers given jointly was struck out.

In the House of Commons the proceedings were accelerated by consent. The Bill was not opposed, and passed without amendment [71 H. C. J. 525].

1817—MRS. DYOTT'S AMENDING BILL.

Reference to Judges—Amendments in Committee—Petition of promoter to withdraw the Bill rejected—Promoter presented petition against the Bill in the House of Commons—Bill amended by that House.

A PETITION was presented by Mrs. Dyott, under her maiden name of Eleanor Thompson, praying leave to bring in a Bill to explain and amend the Divorce Act passed upon her husband's petition in the previous year. It was referred to the Lord Chief Justice of the Court of Common Pleas and another Judge, who reported in favour of its introduction [51 H. L. J. 57, 144].

It was alleged that the intention of the previous Act was to declare null and void the powers given to Mrs. Dyott and her husband to raise the sums of £10,000 and £5,000, but to leave to her the annuity of £800 for her life, the income of the trust estate for her natural life, and the power of appointment amongst her children, and that the concluding words of the proviso (*ante*, p. 75)—"in such and the same manner as if the marriage of the said W. D. and E. D. had been dissolved by the death of the said E."—were left in the Act through inadvertence, and nullified the intention of Parliament. The learned Judges reported:—"We think that the questionable words must have been left in the said Act by mistake, and we are of opinion that it is just and reasonable that this mistake should be corrected, and we think that the Bill hereunto annexed, which we have perused and signed, is proper for effectuating the purposes above mentioned" [*ibid.* 322].

The Committee met and amended the Bill as they conceived to be conformable to the intention of Parliament. These amendments converted the Bill into one giving effect to the construction contended for by General Dyott. The agent for the lady requested that the Bill might be withdrawn. The Committee reported on the situation thus created to the House. Petitions for leave to withdraw the Bill and against such leave being given were presented by Mrs. and General Dyott respectively [*ibid.* 300, 322]. Mrs. Dyott was not permitted to withdraw her Bill, so it passed as amended by the Committee [*ibid.* 325].

In the House of Commons.

As soon as the Bill was read a first time the lady presented a petition against its being allowed to pass. On 3rd of July a debate took place on the Third Reading; it was adjourned to 7th and again till the 9th of July, when it was read a third time. Amendments were then made by the House [72 H. C. J. 468], the effect of which was to repeal the proviso (*ante*, p. 74), to restore to her the annuity of £800 for her natural life, and to give her, in the event of her surviving General Dyott, in addition one-fourth of the income of the trust estate, the remaining three-fourths for the benefit of the children of the marriage. Her power of apportioning the reversion and other provisions in the event of failure of issue of the marriage was confirmed; but the power to grant leases of the trust estate in the event of her surviving General Dyott was taken away. The powers of appointment given to either of them in favour of the children was declared void. All the other powers in the settlement were to take effect [72 H. C. J. 468, and the Act].

It became law in that form.

1852—BENNETT'S BILL.

Substituted Service—Husband's conduct—Separation deed—Collusion—Bill rejected.

SUBSTITUTED SERVICE.

On 17th May evidence was given on the petition for substituted service on the wife's solicitor and on her proctor in the Ecclesiastical suit. The petitioner's agent and his clerk proved that the lady's solicitor refused to give her address to them, and that they made inquiries from some of her relations, one of whom offered to communicate with her. Substituted service was ordered as prayed [84 H. L. J. 155].

SECOND READING.

On the 25th and 27th of May Mr. *Merewether* appeared for the petitioner on the second reading, and evidence was given to the following effect :—

The parties were married in 1833. Under the marriage settlement Mrs. Bennett was entitled to one-fourth clear share of a sum of £20,000 for her sole and separate use.

With the exception of disputes about money matters, they lived happily together till the Autumn of 1844, when the wife left her husband.

A Mr. Touchett had been for some time acquainted with the family, having been introduced by the petitioner. An aunt and other members of the petitioner's family disapproved of the intimate manners and bearing of Mr. Touchett towards Mrs. Bennett, and remonstrated with her about it. But this aunt did not inform the petitioner of his wife's behaviour.

The petitioner was jealous of men who visited at his house, including Mr. Touchett. In 1844 the latter wrote an insulting letter to the petitioner, and a duel nearly resulted therefrom.

On his wife's departure in 1844, the petitioner made many attempts to discover her address. He employed solicitors, and obtained introductions from the Foreign Office to British agents abroad to obtain their assistance.

The wife went to France *viâ* Southampton, and passed under the name of Mrs. Bernard. Mr. Touchett was also a passenger by the same steamer. Subsequently she lived at Pisa and Florence, at which places Mr. Touchett was a visitor at her house, but no improprieties were proved.

She next moved to Valencia, where she passed under the name of Mrs. Freemantle. The petitioner, in December, 1845, discovered she was living there. He went there, and frequently dined at his wife's house, and walked out with her afterwards. The lady's maid was usually present at dinner. When he came on such occasions he brought a friend. They did not dine alone. But it was possible for him to come to the house without the

maid knowing of it. The petitioner and his wife did not get on well while in Valencia, and she informed her maid that she had no intention of living with him again.

One day the petitioner met Mr. Touchett in the street and attacked him with a life preserver. The authorities interfered, and sent Mr. Touchett away because he was passing under an assumed name. They would not allow the petitioner to leave the city for some time afterwards.

In May, 1846, a separation deed was entered into, the wife consenting to it on the condition that she retained the custody of the child.

Mrs. Bennett went to live in Paris.

On her return to England the petitioner called to see her several times on business, and also to see his children, but cohabitation was not resumed.

On her returning to England a second time in August, 1851, she stayed at Horsham. Mr. Touchett followed her there, and after dinner they took a drive. They were then being watched, and next morning the petitioner arrived, and, on being informed of certain matters, brought in a policeman. He refused to see his wife after the discovery.

Adultery at Horsham on that occasion was proved clearly.

The Lord Chancellor (Lord St. Leonards), in moving that the evidence be printed, called attention to the following points :— Mr. Touchett had been a visitor at the petitioner's house for a long period, and early in the acquaintance a member of the family had expressed dissatisfaction with the conduct of Mr. Touchett, but the petitioner did not see it in the same light. The lady, under the settlement, was possessed of considerable property for her sole and separate use, and there was evidence that differences had arisen about money matters. The husband again had permitted her to live away from him from the Autumn of 1844 till December, 1845, when she was found living at Valencia under a feigned name. He committed an assault there on Mr. Touchett. He remained several months at Valencia, and it was not until the following May that a deed of separation was executed. By that settlement the petitioner obtained enough money to pay his debts, and there was a clause by which neither party in future was to interfere with the other. The lady was then left entirely to her own guidance.

(*Adjourned Hearing.*)

On 14th June Mr. *Merewether* proposed to call fresh evidence to show that the petitioner, when at Valencia, called about the child's dinner hour, and afterwards took him for a walk, and that he and his wife were never alone together.

The Lord Chancellor directed counsel's attention to the evidence of the lady's maid, which had been very clear and dis-

tinct. He pointed out that it was contrary to the rules of the House that witness should be called to contradict the evidence given by another witness on the same side.

Further evidence was given as to the actions of the petitioner after the flight of his wife in 1844 to show that his efforts to find her were made in earnest.

On 24th June the Earl of MOUNTCASHEL moved that the Bill be read a second time on the ground that there was no collusion. The second reading was opposed by the LORD CHANCELLOR and LORD BROUGHAM. The Bill was rejected.

1852—BATLEY'S BILL.

Desertion of wife by petitioner—Bill rejected.

SECOND READING.

Mr. *Merewether* appeared for the petitioner; the respondent was not represented.

At the hearing on the 1st April the following facts were proved:—The marriage took place on 9th Oct., 1848, and was a clandestine one. The petitioner was then under 20 years of age, but represented himself as being of full age. After the marriage the petitioner told his father of it. The latter made enquiries respecting statements he was informed had been made to his son by the respondent as to her parentage, and found that the alleged statements were untrue. But there was no evidence that the alleged false statements had been made by the respondent to the petitioner. The father thereupon insisted on the petitioner leaving his wife, which he did a week after the marriage.

On the 4th November following, a magistrate made a maintenance order of 7s. a week against the petitioner.

It was also proved that prior to her marriage the respondent had been a shop girl, and had been well conducted, and that the petitioner knew of her occupation and how she snpported herself.

On 6th June, 1849, the respondent was watched and followed by the husband and other witnesses, who discovered the commission of the adultery charged. As soon as they identified the respondent they left and made no attempt to ascertain the name of the adulterer. He was not asked his name nor followed.

The petitioner was employed in an office in the city at a salary of £80 per annum, but resided at home with his father.

The House declined to pass the Bill owing to the husband's conduct, but gave him an opportunity to call further evidence. The LORD CHANCELLOR (Lord St. Leonards) remarked that it was a clear case of desertion and not merely a separation.

(*Adjourned Hearing.*)

On the 14th June further evidence was called. Several witnesses were examined to prove that the respondent was about 28 years of age, and, previously to her marriage, had at various times and places been guilty of great levity and laxity of conduct; actual criminality was not proved on those occasions.

The House was not satisfied, and the Bill was rejected.

1853—CUTBILL'S BILL.

Delay of nine years—Reasons for delay—Action at law and Statute of Limitations.

SECOND READING.

Mr. *Edwin James*, Q.C., and Mr. *Honeyman* appeared for the petitioner.

The petitioner was the manager of a bank in the city of London. The adultery charged in the Bill was committed in 1843, and the divorce *a mensâ et thoro* was obtained in the same year. No action was brought until May, 1852, by which date the adulterer had gone abroad, and was residing in Constantinople.

Counsel explained that the action at law was brought on the advice of counsel. Damages had been assessed at £500, but were not recovered.

The Earl of Devon.—Do you intend offering evidence as to the non-recovery of damages?

Mr. *James*.—No, my Lord. The defendant has been outlawed. A solicitor appeared for him in the action, but there was no defence.

The Lord Chancellor (Lord Cranworth).—Then he did not plead the Statute of Limitations?

Mr. *James*.—No, my Lord.

The Lord Chancellor.—That might have been all very well, but it was in fact a collusive proceeding, for there was a complete bar to the action by the Statute of Limitations.

Counsel were informed that this was a case in which the petitioner could be called on to explain the circumstances.

Evidence was then given, including that of admissions made by Mrs. Cutbill to a relative, and it was proved that such were made quite voluntarily, no inducement to do so being held out to her. Letters from her to her husband were also proved.

The petitioner, at the conclusion of his case, was called by the House and gave the following evidence:—"Being a very young man without any property whatever I was compelled to limit my proceedings to the Ecclesiastical Court; that, in fact, took at that time all I had. Then, again, there was the publicity which, connected with a public institution, was in itself a bar to my progress, and I found,

in fact, that these very proceedings did induce certain gentlemen to call my attention to the injury the Bank might sustain from any further proceedings in the matter. I have now fortunately, by time and by an advancement in the position in which I was placed, and by economy on my own part, been enabled to take these proceedings, for, with the additional expense in the education of my children, I have devoted my savings to bring this case before your Lordship's Bar. I had not the means to do so earlier. My income at that time was £400 a year; it increased with time."

The LORD CHANCELLOR, after a few remarks, said that the evidence appeared to be conclusive, and he should, therefore, advise their Lordships to read the Bill a second time. The Earl of DEVON concurred.

The Bill passed in due course.

1856—TALBOT'S BILL.

Rights of relatives to represent respondent—Case contested on the facts—Two sets of counsel and agents heard for respondent—Use of evidence in Court below.

THIS case was strenuously contested by some relatives of the lady on her behalf, as she was alleged to be unable mentally to do so for herself. They engaged Parliamentary agents, retained counsel, and obtained evidence. A petition for substituted service was presented, and the usual order made on these Parliamentary agents.

SECOND READING.

Mr. Sergeant *Byles*, Mr. *Montague Smith*, and Mr. *Honeyman* appeared for the petitioner.

Counsel for the defence were Mr. Sergeant *Wrangham*, Mr. *Edwin James*, Q.C., Dr. *Ball*, Q.C. (of the Irish Bar).

At the second reading other counsel, Mr. *Merewether* and Hon. *Geo. Denman*, instructed by other Parliamentary agents, claimed to represent the lady herself and her father.

Mr. Sergeant *Wrangham*.—We appear upon the instructions of the lady's relatives, as she is not now of sound mind. They have defended her with her consent all through this case up to the present, and she has been living under their care up to a few days ago since November, 1852. My friends are instructed only to make a colourable defence. We alone have taken active steps and have summoned witnesses, and we ask to cross-examine the witnesses of the petitioner.

Mr. *Merewether*.—It is not true that the lady is mentally incapable. We alone represent her and have her direct authority.

The LORD CHANCELLOR (Lord Cranworth).—We will hear both of you, and if you are, as I do not doubt, *bonâ fide* opposing

the Bill, you shall have the advantage of your own opposition and Mr. Sergeant Wrangham's also.

Lord BROUGHAM.—That puts an end to all technicality. Though we take these cases as if they were quasi-judicial, and between party and party, we are in a legislative capacity; we are making a law, a privilegium no doubt, but a law, and we may call witnesses though neither party does so. You will take special care not to press your arguments and your opposition in such a way as to give rise to the supposition that it is a collusive opposition, because that will put an end to the Bill.

The LORD CHANCELLOR.—You may appear with great propriety to watch the proceedings. If Mrs. Talbot has been living for some time under the roof of her brother and sister, that is a reason which would induce this House not to legislate upon this subject without hearing them.

Mr. *Merewether*.—Mrs. Talbot left her friends, and is now within the precincts of the House. If your Lordships ask her in private whom she authorises, she will tell you that we represent her, and will repudiate the assistance of Mr. Sergeant Wrangham.

Mr. Sergeant *Byles* then opened the petitioner's case, and called evidence.

The main charges of adultery relied on in the matrimonial suit were abandoned. Two of the principal witnesses had been discredited—one of them had left the country. Fresh charges were relied on, and witnesses called who were not called in the matrimonial suit. An explanation was given as to the reason these persons were not called before, and it was explained how the petitioner had not become aware of their testimony at an earlier date. Much cross-examination was directed to the questions of alleged confessions and the state of mind of the lady at the time they were made.

The case was strenuously contested, and lasted several days.

The following extracts from their Lordships' opinions in support of the second reading are of general interest:—

The LORD CHANCELLOR.—My Lords, these cases, when they come before your Lordships' House, are cases in which your Lordships' attention has been ordinarily directed rather to see what the conduct of the parties has been, and whether, assuming adultery to have been committed, there are still circumstances which disqualify the suitor or the applicant from obtaining any relief from your Lordships' House in the way of legislation, or whether there are not such circumstances. It has rarely happened that there is a distinct issue raised, as it were, by the wife upon the fact of her having or not been guilty of the adultery, which is the foundation of the application. That, however, is the ground here. It is the main ground—indeed

I may say substantially the sole ground. . . . My Lords, it has been the invariable practice of your Lordships' House, in cases of this nature, and a most correct practice it is, to act not upon the evidence which has been taken in the court below, but upon evidence to be heard by your Lordships, taken *viva voce* at your Bar. And I take it that although by the Rules of this House the evidence and the whole of the proceedings in the Ecclesiastical Courts are to be laid upon the table of your Lordships' House, and the proceedings in the action against the adulterer are also to be laid on the table of the House, it is not upon that evidence, or any part of that evidence, that your Lordships proceed. Your Lordships are to see whether it is made out by satisfactory evidence here that adultery took place. When I say that your Lordships are not to look at that evidence, your Lordships may, I consider, with perfect propriety, as to any part of the evidence which is adduced here which you view with suspicion, look to see how far the case made below tallies with the case here, how far it is consistent or inconsistent with it, and how far there may be any contradictions which may lead your Lordships to doubt the truth of what is said at your Lordships' Bar. And further, as would be the case in a Court of Justice, it may be that from the death or the absence of a witness who had been examined below, but cannot, on account of that death or absence, be examined at your Lordships' Bar, the evidence below may become legitimately admissible, just as if the party were here . . ."

(His Lordship then discussed the evidence, and moved the second reading of the Bill.)

Lord BROUGHAM.—There are several peculiarities in this case. One is with respect to the parties before the House. You have the petitioner, Mr. Talbot, who applies for this remedy. You have then against him, and in decided and distinct opposition to his claim, the family of this unhappy lady, Mrs. Talbot. You have also not so plainly and distinctly in opposition to the petitioner, but partly opposing and partly watching this case, the counsel representing Mrs. Talbot herself. Now, that might give rise to some suspicion were it not for the circumstances to which I am about, in fairness to the parties, to advert in regard to this mode of conducting the opposition or watching the case—viz., that Mrs. Talbot did not so absolutely desire to frustrate the attempt of her husband to obtain a divorce as her family did, inasmuch as she possibly might be put in a worse situation in some respects by his failure than if the Bill passed into law, and she had under its provisions the usual relief by the allowance which is always given. I hardly know an instance where it has not been so allotted to the wife in the case of a divorce.

Now, my Lords, this does not lean to any inference hostile to the case of Mr. Talbot, because, supposing it were perfectly

true that Mrs. Talbot did not oppose at all, and that the opposition to his suit was only on the part of her family, that would only leave this case in the same position in which 99 cases out of 100 of all such cases stand before us—namely, that there is no opposition generally, it is supposed, because the wife has no chance of prevailing on your Lordships to disbelieve the case against her; but also in many cases, no doubt, because she does not object to the remedy being obtained by the husband. It would only lead us to place the present case in the same position as the great majority of other cases of non-opposition on the part of the wife, where it does amount to evidence of collusion, or to its being supposed to be a collusive proceeding between the parties, which non-opposition is never held sufficient to frustrate the attempt of the husband.

According to the course of your Lordships' proceedings it could hardly have been otherwise than that one party only should maintain the opposition, even supposing that Mrs. Talbot entirely agreed with her family in strenuously resisting the attempt of her husband to obtain his divorce, because we should only hear one party where the case was exactly the same; where the case diverged, then we should have heard both; but where the cases were substantially identical, we should only have heard one; and it signifies very little, either to the House or to the parties themselves, that two parties equally, and in the same manner opposing the Bill, should conduct one opposition. . . . I do not consider that we are precluded from looking, even minutely, into the proceedings in the Court below. Doubtless we never confine ourselves to these proceedings; we rely upon the evidence brought before us; but it is remarkable that the case in the Consistorial Court in Ireland, both originally and in the appeal to the delegates, was most materially different from the cases before your Lordships. That is to say, in regard to the evidence upon which the parties then relied and upon which these two consecutive sentences were pronounced the witnesses were different. A very considerable number of the most important witnesses who have been examined here were never examined there. With respect to some of the witnesses who were examined there (and I may say, in passing, that the testimony of some of them appears to have been thrown over and rejected by the Court), they have not been called here at all. Most material witnesses—I should say even the most material witnesses in some respects—were presented in this House for the first time. That is nothing conclusive against Mr. Talbot. It does not even seem to me to be anything calculated justly to raise a suspicion against him, because he had better witnesses, more satisfactory witnesses, to adduce in support of his case; and I think it has been satisfactorily explained how it was that these witnesses were produced here for the first time, the circumstances being laid before us

which led to the discovery of that evidence, and circumstances being also laid before us from which arose the consequence of their evidence not having been known to Mr. Talbot before.

Lord ST. LEONARDS.—We have necessarily had, according to the Rules of the House, the evidence in the Court below upon this case. As my noble and learned friend has stated, we do not make use of that evidence except for the purpose of satisfying ourselves how far it justified or not the decision which was come to in the Court below. But we are not precluded from looking at it, though I think we are fairly precluded from acting upon it.

1877—CAPTAIN BEAMISH'S BILL.

Personal service abroad—Identity of persons served with the respondent—Use of photographs.

MATRIMONIAL SUIT.

IN the proceedings in the matrimonial suit in Dublin an affidavit was filed to the effect that Mrs. Beamish had left for Australia in the SS. "City of Florence." On 12th July, 1875, leave was given to the petitioner to serve a citation personally out of the jurisdiction, and three months were allowed for appearance to be entered in answer [I. R. 10 Eq. 413].

On 21st September the citation was served on Mrs. Beamish in Melbourne, personally, by Mr. Herbert Davis, clerk to Mr. William Davis, a solicitor practising there. The affidavit of service, however, did not disclose evidence that the lady served was the respondent in the cause.

The learned Judge declined to set the cause down for trial in the absence of evidence of identity of the person actually served, and he consulted with the learned Judge of the Divorce Court in England as to the practice in that country. The application to set the cause down for trial stood over for the required evidence to be procured.

On 7th Feb., 1876, the application was renewed. An affidavit was read showing that a Mrs. Beamish had sailed on the "City of Florence" from Gravesend to Melbourne in June, 1875, but the officials at the steamboat office had not seen the lady, and could not identify her as the original of the photograph supplied to them. It was also shown that at the time the papers were sent for service to Melbourne there was also sent to the correspondent there a photograph of the lady. He replied that he had put the matter in the hands of his solicitor, Mr. William Davis, and that he had received from that gentleman the documents supplied and the affidavit of personal service.

The learned Judge still declined to make the order for hearing, on the ground that there was no affidavit to show that Mr. Herbert Davis, who served Mrs. Beamish, ever saw the photograph.

The photograph was again sent out to Melbourne, and on 18th July, 1876, another application was made to set down the cause for trial. An affidavit was read, sworn by Mr. Herbert Davis, to the effect that before he served the citation he had been supplied with a photograph (which he marked and returned), and that Mrs. Beamish "appeared to me to be, and that, to the best of my knowledge, information and belief, she was the person of whom the said photograph marked 'B' was a likeness, and her personal appearance completely corresponded therewith, and she then admitted to me that she was the said E. I. Beamish, the above-mentioned respondent, and that she had just arrived from Europe in the Ship 'City of Florence.'"

The cause was then set down for trial, and it was ordered that an advertisement of the time and mode of hearing should be inserted in the *Times* newspaper.

The cause was heard, and the decree *a mensâ et thoro* pronounced on 18th November, 1876.

THE BILL—SECOND READING.

A Bill was then introduced in the House of Lords and came on for second reading on 20th March, 1877.

Mr. *Warner Sleigh* (who appeared for the petitioner) informed the house that personal service had not been effected, because the lady was willing that all the necessary papers should be served upon her in Australia, but she had not instructed any person to represent her in this country.

The hearing was thereupon adjourned till a copy of the Bill should be served upon the lady or until she should appoint some person in this country to represent her, who would be authorised to accept service on her behalf. The LORD CHANCELLOR (Earl Cairns) said—"It would be a very dangerous precedent to read a Bill of this nature a second time without its being ascertained whether the person to be affected by it desired to say anything on her own behalf." The case was then adjourned *sine die* to give an opportunity of serving the lady with a copy of the Bill.

(*Adjourned Hearing.*)

The Bill came on again for second reading on the 3rd of August.

Mr. *Warner Sleigh* reminded the House of the circumstances under which the second reading had been adjourned, and called Mr. Henry Cruise to prove service of the Bill and Order personally upon Mrs. Beamish.

The witness deposed that he was agent for the petitioner. Since the Bill was last before the House he had been to Australia to serve Mrs. Beamish with a copy of the Bill. He had been introduced to her by Mr. Herbert Davis on the 1st June in Melbourne.

The LORD CHANCELLOR.—How do you know it was Mrs. Beamish?

The witness stated that he had taken some photographs of

the lady over with him to enable him to identify her, and Mr. Davis had introduced her to him as Mrs. Beamish.

The LORD CHANCELLOR.—How did you know that it was the respondent? Did you know her previously? It might have been some one else whom you saw.

The witness said he had no doubt in his mind from the manner in which she received his communication.

The LORD CHANCELLOR.—I did not ask whether you had any doubt. I want to know how you knew it?

The witness said by her photographs, which Mr. Ware, a solicitor practising in Cork, had given him.

The LORD CHANCELLOR.—And is that the only way you knew that she was the respondent?

The witness said he had been introduced to her by Mr. Davis, who was well acquainted with her, having served her with all the proceedings in the case, and she admitted that she was the Mrs. Beamish in question.

He also stated that he had presented Mrs. Beamish with a copy of the Bill, and had explained it to her. She had signed her consent to it at the foot of the Bill. Counsel handed in an affidavit made by Mr. Davis as to the identity of the lady.

The LORD CHANCELLOR.—How do you show that it is an affidavit by Mr. Davis?

Mr. *Warner Sleigh.*—It was purported to have been sworn before a public notary in Melbourne.

The LORD CHANCELLOR.—How is it shown that it is the ordinary course for a notary public to take affidavits or that he has authority to administer an oath?

Counsel stated he was not in a position to prove that point except by calling the solicitor who knew from having been concerned with proceedings in Melbourne.

The LORD CHANCELLOR.—That will not do.

Counsel then observed that he was prepared to prove the handwriting at the foot of the Bill and the photographs.

The witness then stated that the photographs he produced were those that he took with him to Australia, and were those by means of which he had identified Mrs. Beamish. He had received them from Mr. Ware of Cork.

Mr. Ware was then called, and stated that he knew Mrs. Elizabeth Beamish very well; that the photographs produced were hers, and were very good likenesses; that he had bought them from the photographer in Cork who had taken them, and that he had given them to the last witness for the purpose of identifying Mrs. Beamish.

Capt. Beamish, the petitioner, was next called, and said that the photographs produced were those of his wife, and that the handwriting at the foot of the Bill, giving consent to it, was hers. It read as follows:—"I consent to the foregoing, and that the

Bill shall be read a second time in the House of Lords and passed into law, subject to such amendments as it may be expedient to make. (Signed) E. J. Beamish."

The LORD CHANCELLOR.—You may now proceed with the Bill.

Counsel then proceeded with the case for the Bill, and proposed to put in evidence the decree of the Court in Dublin. Counsel were informed that the decree could only be taken as evidence of the fact that such a decree had been pronounced, but not of the facts of the case.

Along with other evidence a letter of the wife's addressed to the adulterer was produced. It had been found on the hall table by the petitioner, and opened by him. He was examined by the Lord Chancellor as to the reasons which led to his opening the letter. Evidence of a written confession and the circumstances under which it was made, was also given. The Lord Chancellor enquired particularly into the circumstances under which it was made.

The LORD CHANCELLOR.—The second reading of this Bill came before your Lordships in March last, when it appeared that notice had not been given to the respondent. Your Lordships thought that acting upon what has always been the practice of this House, that where it was physically possible to effect service it ought to be effected, and for that purpose the matter stood over. I think the evidence of service is satisfactory and that the evidence of the identity of the person served, which is in these cases always of great importance, is also sufficient.

His Lordship then reviewed the evidence, and moved the second reading of the Bill.

(From the proceedings in the Court in Dublin, noted above, it will be seen that Mr. Davis' knowledge of the identity of the lady rested on the photograph alone. As soon as her handwriting was proved the case was allowed to proceed.)

1887—HEWAT'S BILL.

Substituted service—Allegation in preamble as to reputed father of a child—Evidence given in divorce suit rejected as inadmissible—Statements in child's favour retained in the Act.

IT was recited in the preamble to the Bill that the parties cohabited until the 22nd Sept., 1885, on which date the respondent left the petitioner's house. There was a paragraph inserted in the following terms :—

> "That up to the twenty-second day of September one thousand eight hundred and eighty-five there was no issue born of the said marriage, but on the second day of May, one thousand eight hundred and eighty-six the said Agnes Anna Hewat gave birth, in the City of

Page 2, line 1 of Bill.

Line 5. Manchester, to a male child (which your said subject does not acknowledge to be his offspring)—to wit, Percy Edward Borrowes, surnamed Little, reputed to be the son of George H. J. Lyttle, farmer, hereinafter mentioned."

A corresponding paragraph alleged adultery "in and during the month of August," 1885. There was a second charge of adultery, which occurred on the steamboat on which the parties sailed to South Africa on the 14th Oct., 1885.

On the hearing of the divorce petition in Dublin, in support of the first charge of adultery, evidence had been given of statements made by the respondent as to the paternity of the child. Evidence of non-access for some months prior to August had been given by the petitioner in corroboration of the respondent's admissions.

SUBSTITUTED SERVICE.

On the 11th February, 1887, a petition was heard for substituted service on Mr. Wheatley, the solicitor who represented the respondent in the divorce suit in Dublin.

Mr. *James Roberts* appeared for the petitioner.

The petitioner's solicitor, Mr. Carruthers, proved that he had informed the respondent's solicitor that the petitioner intended to apply to Parliament for a Divorce Bill, and that he asked him to obtain her consent to his accepting service of the Bill. A letter to the witness from Mr. Wheatley was proved. It was as follows:—"I informed Mrs. Hewat of Mr. Hewat's intention to apply for an Act of Parliament annulling his marriage with her, and I have received full authority from her to accept service of any such Bill or document on her behalf, and I undertake to forward same to her at her present address, Diep River, Western Province, Cape Colony."

The House was informed that Mr. Wheatley was in attendance, but he was not called.

The order was made as prayed.

Counsel asked that the second reading might be fixed for the 12th or later day in March, as the two principal witnesses were officials on a steamboat that was expected to arrive about 9th March.

SECOND READING.

The Bill came on for second reading on 21st March, 1887. Mr. *James Roberts* appeared for the petitioner. The respondent was not represented.

Mr. *Roberts* opened the case for the petitioner.

At the conclusion of the opening statement, the LORD CHANCELLOR (the Lord Halsbury), called attention to the above paragraph, and intimated that it could not remain in the Bill.

Mr. *Roberts*.—There are several precedents for reciting

the reputed father, although not when the birth was within the period of capable access. [The LORD CHANCELLOR.—That makes all the difference; you are asking the House to decide the question raised by that paragraph in the absence of the person most interested—the child]. The allegation is simply that the petitioner "does not acknowledge" the child as his. There is no direct allegation that it is not his, and I submit that the evidence of the petitioner himself and the confession of this lady are admissible to prove the fact that at this date, by their conduct, they did not recognise the child as the petitioner's. [Lord HERSCHELL.—What is the use of the statement? The LORD CHANCELLOR.—Have you any authority for saying that that is evidence? That the petitioner or the mother of the child can prove non-access for the purpose of bastardising the issue?] I submit that there is no allegation that the child is not the petitioner's in fact. [The LORD CHANCELLOR.—Then what is the object of the paragraph?] It is put in because, according to such precedents as I have been able to consult, it is usual to insert such statements [see Macqueen, p. 505]. But the child, or those claiming under him, in order to prove their claim against the petitioner, would have to prove that the lady registered as the child's mother in Manchester was, at the date of his birth, the petitioner's wife. I submit that this paragraph contains admissions of these facts, and is in the child's favour. The petitioner does not wish to press this in any way, nor to do anything that would prejudice the child. He is not seeking to set aside a settlement under which he takes an interest in remainder. He would be glad to be allowed to amend the preamble in any way your Lordships think desirable.

Evidence was then called. When the petitioner was asked questions to elicit the same evidence he had given in Dublin, as to the allegation of the first charge of adultery in August, 1885, counsel was informed that it was not admissible. On a witness being called to testify to the respondent's admissions counsel was informed it would be better to call evidence on the second charge at once. The adultery on the steamboat was then proved.

The House went into Committee on the Bill on the next day, and amended the paragraph in question by striking out the words shown in brackets—*i.e.*, "page 2, line 5—leave out from the word 'child' to the second 'to' in line 6" [119 H. L. J. 116].

The clause, as amended, and reciting the name of the putative father, is retained in the Act.

1897—REV. W. VANSTON'S BILL.

Separation and separation deed—Variation and custody of child—Practice as to bars to relief.

SECOND READING.

THE second reading of the Bill came on on the 15th July.

Mr. *James Roberts* appeared for the petitioner; Mr. *Inderwick*, Q.C., and Mr. *Barnard* appeared for the respondent.

Mr. *Roberts*, for the petitioner.—The parties lived unhappily during the first year of their married life, and finally the lady filed a petition against her husband on the alleged grounds of cruelty. That petition was not tried, but the matter was settled by a deed of separation, executed on the 15th May, 1884. Under that the lady was to receive an annuity of £65 during the joint lives of herself and the petitioner, and after his death, as long as she remained a widow. It was made a charge on certain lands. There was also an additional sum payable to the lady and charged on the same property for the benefit of the child of the marriage, "to be further increased to £25 annually from thence to the 17th Dec., 1890, all in advance; during all which time the said child should be in the exclusive custody of the said H. M. Vanston. After the said last-mentioned date the further maintenance and custody of the said child to be subject to the order of the Lord Chancellor for the time being." As the respondent's counsel objected to the wording of the proposed variation of this deed, we have agreed that the clause shall be modified. The respondent gives up her right to the annuity, and the petitioner gives up his right to claim the custody of the child, provided he has reasonable access to the child from time to time on giving reasonable notice. In all other respects the deed is to remain in force.

The parties lived apart for many years. In 1896 the lady went to America and obtained an alleged divorce there. She then went through a ceremony of marriage in New York, and returned to Dublin.

The petitioner was advised that, on the ground of public policy, he ought to bring an action against the gentleman whom the lady married. An application was made to stay the action on the ground that the separation deed took away the right of action. The Lord Chief Justice ruled that the right of action still remained, although only nominal damages could be recovered. The case was strenuously contested for three days, and the old allegations of cruelty were renewed, and evidence called. Only a farthing damages was recovered. There was no finding on the direct issue of cruelty either in the proceedings in 1884 or in this action. [The LORD CHANCELLOR (The Earl of Halsbury).—The only point upon which the issue could arise would be if your client was accused of conduct conducing to the

adultery.] The alleged cruelty was twelve years before the American marriage.

Mr. *Inderwick*, Q.C., for the respondent.—This lady obtained her divorce in Dakota, on the advice of American lawyers. She is now advised differently, and does not contest the facts, nor does she object to setting aside the separation deed so far as it relates to her own annuity. She objects to altering the provision for the child. [Mr. *Roberts*.—The clause has no such effect, nor was it ever so intended. Lord WATSON.—Looking at Section 6 I see that it first of all takes away the annuity of the wife; in the second place it says that her rights under that deed shall absolutely cease and determine, and that the deed shall take effect in all respects as if the lady were dead. That does not affect the child's rights at all.] However, we have now agreed on a new clause. [Lord DAVEY.—Can you by agreement determine the custody of the infant?] Yes, we vary the covenant in the deed as to its custody. But that agreement, of course, is always subject to the control of the Lord Chancellor of Ireland.

Lord DAVEY.—If the Court does not think it is for the benefit of the infant that he should remain with his mother, it would have power to say so notwithstanding your agreement.

The LORD CHANCELLOR OF IRELAND (Lord Ashbourne).—I apprehend there is no effort made in this Bill to oust or qualify in the slightest degree the perfect jurisdiction of the Lord Chancellor of Ireland. He can always consider what is best for the benefit of the child. And it would be competent for the petitioner, if circumstances justified it, to show to the Lord Chancellor that the custody of the mother had ceased to be desirable for the child.

The LORD CHANCELLOR.—I do not think, as a matter of fact, that that bargain between the parties, whereby he surrenders his paternal right, is worth the parchment on which it is engrossed. The law would not give effect to it. Nor is the paternal right capable of being bargained away in any way.

Evidence of the lady and the gentleman whom she married in New York living as husband and wife was then given.

The LORD CHANCELLOR.—Perhaps Mr. *Inderwick* can help us in this matter. Has a husband's cruelty, unless it has conduced to adultery, ever been held in the Matrimonial Court to be a bar to the proceeding? In *Lemprière* v. *Lemprière* (L. R. 1 P. & D. 569) both petitions were dismissed.

Mr. *Inderwick*.—There is a provision that conduct conducing to adultery is a bar; there is no provision that cruelty is a bar. If cruelty is proved, and if the Court comes to the conclusion that the cruelty did conduce to the adultery, the practice is to dismiss the petition. If the Court comes to the conclusion

that there has been cruelty, but does not come to the conclusion that it actually led to adultery, the Court gives effect to the section empowering it to grant a divorce, and then some provision is usually ordered to be made for the wife. That is how it is dealt with in practice. [But see now *ante*, pp. 36, 37, 64, 65.]

The LORD CHANCELLOR.—My Lords, I confess some doubt entered into my mind as to whether, when this relief was asked at your Lordships' Bar, you ought not to enquire into the allegation of cruelty. The two parties appear to have settled the other questions, but that question would be one for your Lordships (if it were to be entertained at all) independent of, and apart from, any agreement between the parties, but it does not appear to me to be necessary in this case to enquire further into the matter. The adultery is clearly established, and that would certainly give a *prima facie* right to the husband to obtain the relief which he seeks. Under these circumstances I move that the Bill be now read a second time.

1905—GAMBLE'S BILL.

Substituted service—Appearance of respondent's solicitor—Privileged communication—Order for substituted service by House of Commons.

SUBSTITUTED SERVICE.

ON 13th March a petition was heard by the House of Lords praying that substituted service of a copy of the Bill and Order for the second reading thereof, and of all other Orders connected therewith, be made upon John Haynes, solicitor, and that in the event of the said Bill not being opposed the petitioner may be permitted to read, as he may be advised, the evidence given on the hearing of this petition as evidence on the second reading of the said Bill.

Mr. *James Roberts* (for the petitioner).—The main ground for this application is that the lady has gone to a distance—to Canada. Up to the time of her departure and up to the present moment she has been and is represented by Mr. Haynes, a solicitor acting generally on her behalf in this country. There are precedents showing that that is ample for the present application.

On the 8th July, 1904, the lady wrote from London to the petitioner, and declined to return home. He at once instituted enquiries. On the 22nd July Mr. Haynes went to Dublin, alleging he was acting on the lady's behalf; he did so act along with a Dublin solicitor. On the 23rd August the lady executed a general power of attorney (in which divorce proceedings were not mentioned) appointing Mr. Haynes as her agent. She left for Canada on 25th August.

The petitioner completed his enquiries and filed his petition for a divorce in the High Court of Justice on the 7th of October. After that date Mr. Haynes wrote spontaneously on the lady's behalf to Messrs. Bowles & French, the petitioner's solicitors. After he received a reply he wrote a second letter, enclosing a copy of the power of attorney. His letter and enclosure were brought before the High Court, and substituted service was ordered and effected in due course. The petitioner has reason to believe that the papers so served in due course reached the lady in Canada.

A few weeks ago the petitioner's agent had an interview with Mr. Haynes, throughout which he acted as the lady's solicitor, and he offered to communicate with her provided his costs were paid.

As soon as the Bill was prepared, a printer's proof was given to Mr. Haynes as a matter of courtesy. He, presumably under the lady's instructions, instructed Messrs. Bircham to watch for the Bill at the Private Bill Office, with a view to opposition.

Mr. Haynes will be called to produce the power of attorney, and, if he wishes, to inform your Lordships as to what his position really is; it may render the calling of other witnesses unnecessary.

Mr. Haynes was then examined, and produced a power of attorney, dated 23rd Aug., 1904, signed by Mrs. Gamble, and deposed that he was still acting as her solicitor in this country.

The witness then made a voluntary statement to the effect that he had sent the lady the papers in the divorce suit, which she returned with instructions to a certain extent; that he had communicated with the Dublin solicitor with whom he had previously acted, and who returned them, not being desirous to act in the case. After the proceedings in Dublin had concluded he had received a letter from the lady, dated 12th February, which he would hand to their Lordships, but not to the petitioner's advisers, as it was a privileged communication.

The letter was perused by their Lordships.

The LORD CHANCELLOR (the Earl of Halsbury) (*to Mr. Roberts*).—Their Lordships will make the order you desire.

The second reading was fixed for the first day on which the House took judicial business after the Easter Vacation, in order to give time for instructions to be received from Canada.

SECOND READING.

The second reading took place on 9th May.

Mr. *J. Roberts* appeared for the petitioner, and Mr. *H. T. Turrell* for the respondent.

Evidence was given of the parties living as husband and wife during the voyage to Montreal, from 25th Aug. to 4th Sept. The steamboat witnesses identified them by photographs. This evidence was corroborated by that of a friend to whom, on

22nd August, the lady stated she was going abroad, and by proving a letter written by Mrs. Gamble from Alberta, Canada (since the Bill was introduced), to Mr. Bowles, of Messrs. Bowles & French, the petitioner's solicitors.

At the conclusion of the case for the Bill, Mr. *Turrell* stated that he was instructed to ask that their Lordships would make provision for the wife's costs; and further, that she might have the custody of the youngest child, who was 9 years of age, or at least that she might have access to the children.

Counsel was informed that the custody of the child could not be given to the wife, and that this was not the time to make the other application.

The Bill passed in due course.

(*In the House of Commons.*)

SUBSTITUTED SERVICE.

On 31st May an application was made to the Select Committee on Divorce Bills for an order for substituted service of the Bill and all orders in connection therewith on Mr. Haynes.

Mr. *W. H. Mills* (of Messrs. Mills, Lockyer & Mills, agents for the Bill) applied for an order for substituted service similar to that which had been granted in the House of Lords. He asked that it might be granted for the reasons that had been deemed sufficient in the House of Lords, and also on the ground that since that order was served Mr. Haynes had appeared as solicitor for the lady, and had instructed counsel on her behalf. The lady was in Canada, and Mr. Haynes held a power of attorney from her. In the House of Lords he had been summoned as a witness by the petitioner, and had produced the power of attorney, and had also handed to their Lordships a letter from the lady, the contents of which were unknown to the petitioner's advisers. It, however, satisfied their Lordships. [The SOLICITOR-GENERAL (Sir Edward Carson) inquired whether the power of attorney referred to this Bill.] The power was a general one in common form; it made no mention of divorce proceedings. [The CHAIRMAN (Mr. Sergeant Hemphill) intimated that it was desirable that Mr. Haynes should be in attendance when the Bill came before the Committee.] If Mr. Haynes did not undertake to attend the Committee he was prepared to get an order for his attendance as his witness at the next sitting of the Committee.

The order for substituted service was made as requested.

THE HEARING.

On the 7th June the Bill came again before the Select Committee.

Mr. *Mills* appeared for the petitioner, and called as his witness Mr. Haynes, who proved that he was served with the original

Bill as introduced in the House of Lords. Then, that there was an order made by their Lordships that substituted service should be made upon him. That he communicated with Mrs. Gamble, sent copies of the documents to her in Canada, and heard from her in reply; and that he was also served with the documents in compliance with the order made by the House of Commons.

The petitioner was called, and produced his marriage certificate.

The Bill was directed to be reported to the House without amendment, and passed in due course.

1905—MRS. LAUTOUR'S BILL.

Respondent in New Zealand—Substituted service on his solicitor—Notice by telegram to respondent—Identity—Delay of 13 *years—Desertion.*

THE preamble showed that the marriage took place on 22nd October, 1884. Adultery alleged on divers occasions between April and October, 1885. In the absence of the petitioner her husband broke up their home and left in Nov., 1885. He never contributed to the petitioner's support after that date. Other charges of adultery subsequent to 1885 were alleged. A decree of divorce *a mensâ et thoro* was obtained on 20th April, 1892. The petitioner had no means to promote a Bill at an earlier date.

SUBSTITUTED SERVICE.

A petition for substituted service of the Bill and orders on Mr. Faulkner, who had previously acted for Mr. Lautour in business matters, was heard on 11th April, 1905.

Mr. *James Roberts* (for the petitioner).—This case is peculiar, inasmuch as it is not on all fours with any similar petition in recent years. But it is not unprecedented, as there are several precedents for Orders being made of a nature similar to that now asked for and under like circumstances. (Counsel opened the facts alleged in the petition.) The lady got a decree on the ground of adultery alone, and my learned leader, Mr. *Samuels*, applied to the learned Judge to have the fact of desertion put on the record, with a view to subsequent proceedings in Parliament, but he held he had no jurisdiction to do so as desertion is a statutory ground for divorce only in England; however, the desertion for two years was complete at that date.

Mr. Faulkner has acted for Mr. Lautour at a comparatively recent date. There is very little correspondence with him in New Zealand; none whatever between him and his family. If his relatives wished to communicate with him at all it has been done for years through the solicitor, Mr. Faulkner.

Since this petition was drawn I have been informed that Mr.

Faulkner holds two powers of attorney, the second dated 1900, from Mr. Lautour, in New Zealand. I submit he is his accredited agent in this country.

The case of Mrs. *Battersby*, 1840 (72 H. L. J. 86), is a precedent. Her husband was a convict in New South Wales, where his address was known, and papers could have reached him through the Secretary of State or other official channel, but substituted service was ordered on the attorney who defended him at the Old Bailey. It is a strong precedent, being the first case in which bigamy was a ground of divorce. The second reading took place 18 days after the order was made, and the husband could not possibly have known anything about the proceedings.

The effect of the Bill, when passed, will be to enable this lady to marry again. There is no question of settlements in it nor of custody of children, nor anything that could affect Mr. Lautour in any way. The petitioner in these circumstances is in a position analogous to that of a petitioner in the English Court after a decree *nisi* has been pronounced and before it is made absolute.

Mr. Faulkner then gave evidence. He had acted for Mr. Lautour for many years prior to his leaving for New Zealand in 1899. On leaving he gave the witness a power of attorney, and sent a second one in 1900. The last letter he received from him was on the 8th May, 1902. Since then he heard a few weeks ago of his address from a gentleman who corresponded occasionally with him in New Zealand. The powers of attorney were not revoked.

The LORD CHANCELLOR (the Earl of Halsbury).—I think we ought to insist upon notice of the service being given to Mr. Lautour at this address which has been mentioned—the last address.

Counsel applied to have a day fixed for the second reading. The order for the second reading might be made subject to the petitioner being able to prove at the hearing that notice of it reached Mr. Lautour. [The LORD CHANCELLOR.—You must send a registered letter addressed to Mr. Ernest Lautour at the address given by Mr. Faulkner, and you must make service upon Mr. Faulkner.] Perhaps a telegram might be sent to save time. We might telegraph the substance of the order and notice of the second reading, and then if Mr. Lautour chose to write in reply to Mr. Faulkner there would be direct evidence available that he knew of these proceedings and of his identity.

The LORD CHANCELLOR.—Certainly.

The order for the second reading was subsequently made, and in it the 9th of May as the date of the second reading was inserted provisionally.

SECOND READING.

The 9th May the hearing of the case on the second reading came on.

Mr. *A. W. Samuels*, K.C., opened the case for the petitioner, and indicated the evidence to be called. The decree of divorce *a mensâ et thoro* was made on the ground of adultery alone, but desertion for two years was also alleged in the petition, but the learned Judge held it was not a ground on which he could grant a decree. But, coupled with adultery, it is a ground for divorce in England, and, therefore, for a Bill: Mrs. *Westropp's* Bill, 1886 (11 App. Ca. 294). The petitioner was compelled to leave her home owing to her husband's conduct; he then broke up the home and went away. That constitutes desertion on his part: *Sickert* v. *Sickert* (1899, P. 278). As to the question of delay there are many precedents: Dr. *Lardner's* case, 1839 (6 Cl. & Fin. 569); *Warr's* and *Deane's* cases, 1840 [72 H. L. J. 111, 712].

An order was made on 11th April for substituted service of the Bill and orders on Mr. Faulkner, and that the same should be sent by registered post to New Zealand also. At the hearing of the petition my learned junior, Mr. *Roberts*, suggested the sending of a telegram to save time. That course met with the approval of your Lordships. A telegram in the following terms was sent on 11th April:—"Ernest Lautour, To Kaanu Taupo—Wife presents Bill in Parliament for divorce. Wire forthwith, and write to say whether you defend or not. Faulkner." On 16th this reply was received—"Faulkner, Chandos Street, Cavendish Square, London. No. Lautour." Mr. Faulkner will prove that he was in correspondence with this gentleman in New Zealand, that he knows nobody out there of the name of Lautour except this gentleman, and that he does not believe that anybody in New Zealand, except this gentleman, knew his address as being Chandos Street, Cavendish Square, London. That address was omitted designedly from the telegram sent. I submit that there is sufficient evidence of notice having reached the proper person to enable us to proceed. In Mrs. *Battersby's* case (*supra*) there was no such notice, nor could it have been given in the time. The order of your Lordships as to service on Mr. Faulkner and the sending by post to New Zealand has been literally carried out. It does not mention anything about a reply or the sending of the telegram, which was a subsequent suggestion.

The House decided that sufficient notice had been given.

Mr. Faulkner was then called, and proved the telegrams, and that the respondent was the only person in New Zealand who knew of his address at Chandos Street.

The petitioner and another witness gave evidence.

The Bill was then read a second time.

(*In the House of Commons.*)

SUBSTITUTED SERVICE.

On 25th May Mr. *A. W. Lawrence* (of Messrs. Lawrence & Mavro, agents for the Bill) appeared for the petitioner before the Select Committee on a petition for an order for substituted service similar to that made by the House of Lords. He read to the Committee from the evidence given in the House of Lords in support of the petition for substituted service and the Bill as regards the service and telegram.

The CHAIRMAN (Mr. Sergeant Hemphill) intimated that the Committee desired to have formal proof of Mr. Faulkner's letter, and of the telegrams.

Mr. Lawrence was then sworn, and proved the letter and tele. grams.

The Chairman observed that the order of the House of Lords only required service upon Mr. Faulkner in London and the forwarding of copies of the Bill and orders by registered letter to New Zealand; it made no reference to the telegram. Mr. Lawrence replied that the sending of the telegram was a subsequent suggestion adopted by the Lord Chancellor. The telegram was drafted to cover the proceedings in both Houses of Parliament, and that the reply applied to the proceedings in both Houses.

The Chairman intimated that, having regard to the general form of the telegram and the reply, the Committee did not think it necessary that any further telegram should be sent to Mr. Lautour.

Mr. Lawrence then referred to the proof of service and Counsel's observations on the second reading of the Bill in the House of Lords on 9th May, and also to Mrs. *Battersby's* case (*supra*).

After the Committee deliberated, the Chairman intimated that they would follow the order for substituted service made by the House of Lords.

THE HEARING.

On 31st May the Committee considered the Bill again.

Mr. *Lawrence* appeared for the petitioner, and proved that he carried out the order for substituted service. The petitioner gave evidence.

The Bill was reported to the House without amendment.

1905—MRS. DONOVAN'S BILL.

Personal service abroad—Petition for leave to prove it by affidavit—Identification of respondent—Evidence of admissions by him.

SUBSTITUTED SERVICE.

THE petition prayed that a duly attested copy of the Bill might be transmitted by registered letter to Lawrence Jones &

Co., a firm of solicitors, of Cape Coast Castle, and that the attend ance of a representative of that firm to prove personal service of a copy of the Bill and the usual orders upon D. A. Donovan (the petitioner's husband) be dispensed with, and that an affidavit of a representative of the said firm of such personal service, sworn before a District Commissioner of the Gold Coast, might be deemed to be good and sufficient proof of such service.

Mr. *Lewis Coward*, K.C., for the petitioner.—Personal service in the proceedings in the Irish Court had been effected on the husband, but he did not appear. The present application is that a copy of the Bill and notices may be transmitted by registered letter to Mr. Woodhouse at Cape Coast Castle for him to serve the husband, and that the personal attendance of Mr. Woodhouse to prove the service he effects may be dispensed with. Mr. Woodhouse is the manager at Cape Coast Castle of Messrs. Lawrence Jones & Co.

Mr. *Lawrence Jones* then gave evidence to the following effect :— I am a solicitor of the Supreme Court, practising in London and Liverpool, and am also admitted to practice in the Supreme Court of the Gold Coast Colony. I met Mr. D. A. Donovan in Liverpool, and learned from him that he was Chief of the Police Force at Cape Coast Castle. In 1901 a firm for whom we acted as solicitors employed Mr. Donovan to go out to the Gold Coast. At that time he told me that he was separated from his wife, who resided in Ireland and gave as a reason that he anticipated some attempt would be made to attach his salary or other moneys due to him, and he asked that my firm would not give his address. I identify his signature to the agreement for service, which I now produce. The two photographs now produced are those of Capt. D. A. Donovan. [The LORD CHANCELLOR (the Earl of Halsbury).—Have you anything to identify this person with the husband, D. A. Donovan, mentioned in the petition ?] This post card is in his handwriting, and is addressed to the father of the petitioner. Mr. Woodhouse is a solicitor of the Supreme Courts in England and the Gold Coast Colony, and knows Capt. Donovan. We have had occasion to attempt to recover money from him lately, and we have been in correspondence with Mr. Woodhouse on the subject. Last December I spoke to Mr. Woodhouse about Mr. Donovan, and also saw the latter then at Cape Coast Castle. [The LORD CHANCELLOR.—You have not at present identified the husband of the petitioner with the Capt. Donovan who is known to the witness.] We propose to have that identification effected by the means of the photographs by Mr. Woodhouse out there. [The LORD CHANCELLOR.—I think you have not bridged over the difficulty yet.] There is the post card addressed to the petitioner's father. [The LORD CHANCELLOR.—You have got a photograph of a person known as Capt. Donovan. That

is quite right so far; but you have not identified that person known to the witness with the husband of the lady who petitions.] The evidence corresponds to the description of him in the proceedings of the Court. [The LORD CHANCELLOR.—That will not do. I suppose some one would be able to identify that photograph you have of him—somebody who knows him as the husband of the lady who petitions? LORD LINDLEY.—Does not the lady's father know him?] He is in Ireland, and we only obtained possession of the photograph last night. Mr. Woodhouse will identify him. He will prove by affidavit the service on Capt. Donovan at Cape Coast Castle, and then by means of the photographs and the post card we have evidence we thought would be sufficient. [The LORD CHANCELLOR.—The only difficulty is that you have not identified the person. We will adjourn it for you for some witness to attend who can complete the identification. I am afraid we cannot make the order until you have identified him, but we will make the order when you have identified him.]

(*Adjourned Hearing.*)

On 28th March the petition again came before the House.

The father of the petitioner proved that he was present at the marriage, that the post card addressed to himself was received by him, and was in the handwriting of his son-in-law, and that the photograph was also one of him.

The LORD CHANCELLOR.—We are all of opinion that this evidence is enough for identification. The order will be made.

SECOND READING.

The second reading came on on the 30th May.

Mr. *Lewis Coward*, K.C., and Mr. *Evans Charteris* appeared for the petitioner.

Service of copies of the Bill and orders on Capt. D. A. Donovan was proved by an affidavit of Mr. Woodhouse, sworn before the District Commissioner of the Gold Coast Colony at Cape Coast Castle. The certificate of the Registrar of the District Commissioner's Court to the signature of the District Commissioner was appended. In it (*inter alia*) he deposed that Capt. Donovan was formerly in the Police Force. That he duly served him with copies of the Bill and orders received by registered post from Messrs. Lawrence Jones & Co. That he also received a photograph which he marked, which was the photograph of the Captain Donovan whom he served. That on the occasion of service he showed the said photograph to Capt. Donovan, who immediately recognised it as his own likeness, and as the particular photograph he had given to Messrs. Lawrence Jones & Co. And that he admitted that he was the husband of the petitioner.

Evidence of adultery and cruelty was then given.

The petitioner's solicitor, Mr. *Wynne*, gave evidence as to

admissions by the husband during an interview with his solicitor, Mr. Blake, in connection with negotiations for a settlement of the divorce suit as follows :—" We were about to settle the case when I understood that Mr. Blake wished to have an interview with me. I went to his office, and Mr. Blake, in the presence of the respondent asked me whether the case could not be settled. I told him I thought it was a very serious case . . . I explained to Mr. Blake in his presence " (the particular charge now alleged). " Mr. Blake asked the respondent if this was so, and he said—' Yes. I admit that I did this, but I now ask forgiveness for having done so.' No agreement was come to. Mr. Blake agreed with me that they could not live together for some time."

The Bill was then read a second time.

DIGEST OF CASES ON VARIATION OF SETTLEMENTS AND MAINTENANCE.

1697.—A clause was drafted by the Judges for indemnifying the husband against the lady's debts. Alleged by Dr. Johnson in his life of Savage that her marriage portion was repaid her: *Earl of Macclesfield's* Bill, 16 H. L. J. 222; Macq. 574.

1700.—The wife's claims considered, and a clause introduced securing the repayment of her marriage portion: *Duke of Norfolk's* Bill, 16 H. L. J. 541, 543; Macq. 573.

1701.—A wife's portion amounted to £4,000. On the report of the Committee an amendment to give her £3,000 was proposed and negatived. The Committee of the whole House agreed to a clause giving her an annuity of £100. This was passed by the House. A subsequent petition of the wife's setting forth a pledge of the husband to repay her the £3,000 if she did not oppose the Bill and asking leave to oppose the Bill was rejected: *Box's* Bill, 16 H. L. J. 648, 649.

1728.—Adultery with several persons was proved. The wife's petition for maintenance was rejected: *Cobb's* Bill, 23 H. L. J. 343, 348, 350.

1768.—Parties domiciled in Ireland. On the second reading the House noticed that no provision was made for the wife. Counsel on both sides were required to attend the Committee in order to assist on this point. The result is not stated: *Daly's* Bill, 32 H. L. J. 44, 79.

1769.—Provision for the wife inserted in the Bill by consent: *Duke of Grafton's* Bill, 32 H. L. J. 276.

1779.—There was an ante-nuptial agreement to settle £40 per annum on the wife, who had no fortune of her own. The wife's petition for maintenance was heard. Maintenance was allowed to the amount of £50 per annum, and was properly secured to her before the Bill passed: *Bromfield's* Bill, 35 H. L. J. 698, 751, 761.

1794.—A petition of the wife against the Bill, which would deprive her of her fortune of £12,600, was considered by the House. The result is not reported: *Howard's* Bill, 40 H. L. J. 100, 108.

1796.—The petitioner was a barrister. A clause was proposed to secure an annuity of £100 to the wife, but was rejected: *Shadwell's* Bill, 40 H. L. J. 632.

1811.—The Bill passed the House of Lords. In the House of Commons two clauses were introduced, one annulling the marriage settlement, and another compelling petitioner to allow her an annuity of £400. On the petition of the petitioner the House of Lords disagreed with the amendments, and the Bill was lost; *Loveden's* Bill, 48 H. L. J. 448, 450.

1814.—The wife's fortune consisted of certain public stocks. The House inserted a clause requiring the husband, within six months, to secure her an annuity of £150. As soon as the requisite sum was set aside and secured, and not till then the annuity was to be in satisfaction of all claims under the settlement: *Dundas'* Bill, 49 H. L. J. 1091.

1816.—The wife brought her husband a fortune of £10,000. A clause was inserted giving her by way of rentcharge an annuity of £400: Sir *W. Abdy's* Bill, Macq. 539.

1829.—The wife brought her husband a fortune of £45,000. Consideration of the question of an allowance was postponed, and arrangements were made between the parties: *Tyrrell's* case, Macq. 646.

1850.—A few days before adultery was discovered a deed of separation had been entered into under which the wife was entitled to £200 per annum, in addition to an equal sum under the marriage settlement. The damages fixed by consent at £4,000 had been paid. An amendment was made annulling the annuity under the deed of separation. On the wife's petition this was struck out at the report stage. A clause appears in the Act preserving the deed of separation: *Hartley's* Act.

1854.—A dower of £400 per annum from petitioner's father (not a usual settlement) had been conferred. A clause to discontinue this jointure under the settlement was refused (*ante*, p. 26). A verdict had been taken by consent for £700 and £216 costs, [86 H. L. J. 91]. After the Bill had passed the Committee and third reading in the House of Commons, the last stage was declared void by the House owing to the death of the petitioner, and the Bill was withdrawn: *Berens'* Bill, 109 H. C. J. 305, 350,

1855.—Her rights to an annuity under the settlement were waived by the wife on certain conditions: *Sumner's* Bill, 87 H. L. J. 183.

1857.—A clause was inserted to preserve the wife's rights under a settlement in the event of her surviving the petitioner, under the circumstances of the case: *Campbell's* Bill, 89 H. L. J. 51.

1857.—The marriage settlement was recited, and a clause was in the Bill to deprive the respondent of her interest therein as if she "were actually dead." The trust fund was originally £8,000. The House amended the clause so that she was left an annuity of £230 during the petitioner's lifetime: *Baring's* Act (sect. 8), 89 H. L. J. 221, 235.

1887.—A clause was inserted to the effect that the petitioner should forthwith, on passing of the Act, pay his wife £700. The circumstances of the case were peculiar, and the amount was arranged by consent: Dr. *Atkins'* Bill, 12 App. Ca. 364.

1905.—A clause was introduced by which the marriage settlements were varied by depriving the wife of all interests therein,

as if she had predeceased her husband. He had paid £800 on account of her debts, apart from the settlement. The Bill passed unamended in that respect: Sir *R. MacConnell's* Bill.

CASES OF SEPARATION.

I. *Bills Rejected.*

1798.—The petitioner had signed a separation deed in order to obtain sufficient money from his wife, who was an actress, to keep him out of gaol. The deed contained a clause allowing her to live as if sole and unmarried, and by which the petitioner undertook not to sue for restitution of conjugal rights. On the deed being proved and read, the Bill was rejected: *Esten's* case, 41 H. L. J. 487.

1799.—There was a deed of separation under which the wife was allowed an annuity of £80. It contained a clause to the effect that the agreement was to be a bar to legal proceedings and to suits for restitution of conjugal rights. The husband had introduced his wife to improper society: *Battelot's* Bill, 42 H. L. J. 72.

1802.—The separation was voluntary and for a cause that was obviously inadequate: *Woodcock's* Bill, 43 H. L. J. 463.

1825.—A voluntary separation was caused by a dispute about the appointment of new trustees. The separation deed contained covenants that the husband would not call for restoration of conjugal rights, and that his wife was to live as she pleased, as if she were sole and unmarried. The House asked for precedents for a Bill being passed under such circumstances; ultimately the Bill was dropped: *Barker's* Bill, 57 H. L. J. 554, 584; 58 H. L. J. 330.

1845.—See *Simmons'* case, reported in 12 Clerk & Finelly, p. 339.

1852.—See *Bennett's* and *Batley's* Bills, *ante*, pp. 78, 80.

II. *Bills Passed.*

1798.—The wife was gay and extravagant, and wished to become an actress. The husband opposed this step. As the wife was determined to have her own way a deed of separation was executed. The husband was examined as to these facts. Hon. and Rev. *T. J. Twisleton's* Bill, 41 H. L. J. 542.

1801.—During the husband's absence at sea his wife eloped with a certain man, and was advertised for. She returned to her friends, but gave no satisfactory account of her disappearance. On the husband's return a deed of separation was executed. Subsequently damages were recovered against the man. The husband was called, and proved he did not know of the adultery

when he executed the deed, and that his wife's story of her disappearance was incredible: Lieut. *Hayes'* Bill, 43 H. L. J. 254, 322.

1818.—The husband was kept separate from his wife for some years by being detained as a prisoner of war in France: *Leigh's* Bill, 1 H. L. J. 498.

1825.—Statements had been made to the husband alleging misconduct on the part of the wife before marriage. His father recommended and urged the execution of a deed of separation, and that proceedings should be taken to set aside the marriage. The deed was executed. The grounds for it were considered by the House to be reasonable: *Sullivan's* Bill, 57 H. L. J. 804, 1092.

1826.—There was a voluntary separation. Evidence was given of the violent conduct of the wife towards her husband and of his kind treatment of her. The explanation was considered satisfactory: Lord *Lismore's* Bill, 58 H. L. J. 73, 88, 129, 156, 159, 199, 221.

1827.—The husband and wife had resided in Bombay. After their return to England communications were made to him alleging gross misconduct on her part when in Bombay. The husband immediately separated from his wife till the allegations could be tested. The explanation was considered sufficient: *Grahame's* Bill, 59 H. L. J. 183, 207.

1841.—The wife was compelled to return to England from India on account of her health. The husband continued to live in India owing to his poverty, and being in debt. This was a satisfactory explanation to account for a separation of several years: *Wyatt's* Bill, 73 H. L. J. App. 92, 94.

1842.—The husband was in India, and the wife came to England on account of her health. He made her a suitable allowance for maintenance. The explanation was considered satisfactory: *Ashton's* Bill, 74 H. L. J., App. 56.

1842.—The husband was a farmer. On giving up his farm he let it to a tenant for £250 a year. His wife was of intemperate habits, on account of which the parties separated, he allowing her £50 a year: *Street's* Bill, 74 H. L. J. App. 88

1843.—The petitioner was married when nearly 17 years of age. His father threatened to turn him out if he had any communication with his wife. His father sent him abroad for some years to complete his education, and then he went into the Army, and joined his regiment in India. The wife sued for alimony, which was decreed, and paid by the petitioner's father. For several years the husband gave no money to his wife. His father gave instructions to proceed with a Divorce Bill, and subsequently obtained his son's approval. The son was at that date under age. The explanation was satisfactory: *Morgan's* Bill, 75 H. L. J. App 252-260.

1844.—The husband and wife separated in 1838, two months after marriage, she complaining to friends of coldness and impotency on his part. He sued for restitution of conjugal rights. Subsequent attempts were made to effect a reconciliation, but were ineffectual. The charge of impotency was withdrawn. The evidence explaining the separation was full and satisfactory: *Gape's* Bill, 76 H. L. J. 400.

1844.—The marriage took place in 1832. It was a clandestine one, and not approved of by the husband's family. The wife's character was bad, and she continually provoked her husband and quarrelled with him. They separated in 1834, and in the following year the husband became ill, and gave up business for some years. He suffered from some brain malady. A deed of separation was executed in 1838, the husband making his wife an allowance of £40 per annum. The explanation was satisfactory: *Archbutt's* Bill, 76 H. L. J. 413.

1846.—The husband was an officer. When stationed at Carrickfergus there was no accommodation for his wife to live in barracks with him. She went abroad, and he visited her when he obtained leave. On his regiment being removed to Dublin, his wife did not rejoin him owing to the disturbed state of the country. The explanation was satisfactory: *Creagh's* Bill, 78 H. L. J. 431.

1848.—A correspondence was discovered between the wife and a gentleman. Letters sent by her to him were handed in at the request of the House. The petitioner, on the discovery of these letters, under counsel's advice, had executed a deed of separation in 1841, after exhaustive enquiry had been made as to the wife's conduct. The parties lived apart till 1847, during which period no misconduct was suspected. They came together again in 1847, and finally separated upon the husband obtaining evidence of adultery: *Nicholson's* Bill, 80 H. L. J. 489, 502.

1849.—The husband was 18 at the date of his marriage. Owing to the wife's character, his relations forced him to separate from her a few days after the marriage. Misconduct took place a few days later. The wife instituted a suit for restitution of conjugal rights, which was defended by the husband, who obtained a decree of divorce. The explanation was satisfactory: *C.'s* Bill, 81 H. L. J. 244.

1873.—The parties had been living apart under a separation deed, executed in 1868, on account of "unhappy differences having arisen and become subsisting" between them. The petition for damages in the English Court, in lieu of action for *crim. con.*, was dismissed on account of the execution of that deed on the ground that an action would not lie. The explanations given were satisfactory: *Malcomson's* case.

See Rev. *W. Vanston's* Bill, 1897, *ante*, p. 92.

APPENDIX.

ORDERS MADE AFTER THE FIRST READING.

Where the Husband is Petitioner.

Ordered—That the said Bill be read a second time on . and that notice thereof be fixed on the doors of this House, and that the said (*petitioner's name*) may be heard by his counsel at the second reading to make out the truth of the allegations of the Bill; and that the said (*wife's name*) may have a copy of the Bill, and that notice be given her of the second reading, and that she be at liberty to be heard by her counsel what she may have to offer against the said Bill at the same time.

Ordered—That (*petitioner's name*) do attend this House on . in order to his being examined upon the second reading of . Bill, if the House shall think fit, whether there has or has not been any collusion, directly or indirectly, on his part, relative to any act of adultery that may have been committed by his wife, or whether there be any collusion, directly or indirectly, between him and his wife, or any other person or persons, touching the said Bill of Divorce, or touching any proceedings or sentence of divorce had in any Court for matrimonial causes at his suit, or touching any action at law which may have been brought by him against any person for criminal conversation with the said . . . his wife; and also whether at the time of the adultery of which he complains his wife was by deed or otherwise, by his consent, living separately and apart from him, and released by him as far as in him lay, from her conjugal duty; or whether she was at the time of such adultery cohabiting with him and under the protection and authority of him as her husband.

[When the wife is petitioner similar orders are made, but the second has omitted therefrom any passages corresponding to that referring to the action at law or to the last eleven words.]

ORDER FOR PRODUCTION OF WILLS, &c. (62 H. L. J. 711).

Ordered—That E. B., or other person in whose custody or power the letters of administration of the effects of her late husband, T. B., deceased, or the letters of administration of his effects, with copy of will annexed, or his original will (if the same has not been proved) respectively are, do attend this House forthwith, and do bring with her or him the said documents, in order to their being produced upon the second reading of . . . 's Divorce Bill.

[Similar orders are made in other cases as the circumstances of each may require.]

STANDING ORDERS OF THE HOUSE OF LORDS.

Proceedings in relation to Personal Bills.

149. All Estate, Divorce, Naturalisation, and Name Bills, and all other Private Bills not specified in Order 1 as Local Bills, are in these Orders termed Personal Bills. Personal Bills defined.

Personal Bills to be brought in on petition.

150. No Personal Bill shall be brought into this House except on petition for leave to bring in such Bill, and a printed copy of the proposed Bill shall be annexed to such Petition, and shall be deemed to form part thereof.

Petitions for Personal Bills to be signed by parties concerned.

151. One or more of the parties principally concerned in the consequences of any Personal Bill shall sign the Petition that desires leave to bring such Bill into this House.

Personal Bills to be delivered to all persons concerned.

152. A copy of every Personal Bill introduced into this House shall be delivered to every person concerned in the Bill before the Second Reading; and in case of infancy, such copy shall be delivered to the guardian, or next relation of full age, not concerned in the consequences of the Bill.

Divorce Bills.

No petition for a Divorce Bill to be presented without a copy of the previous proceedings.

175. No Petition for any Bill of Divorce shall be presented to this House unless an official copy of the proceedings taken or had in the court having jurisdiction over matrimonial causes at the place of his domicile or residence, or in some other court having jurisdiction in that behalf, at the suit of the party desirous to present such Petition, be delivered upon oath at the Bar of this House at the same time.

No Divorce Bill to be received without a clause prohibiting the offending parties from marrying,

176. No Bill grounded on a Petition to this House to dissolve a marriage for the cause of adultery, and to enable the petitioner to marry again, shall be received by this House unless a provision be inserted in such Bill that it shall not be lawful for the person whose marriage with the petitioner shall be dissolved to intermarry with any offending party on account of whose adultery with such person it shall be therein enacted that such marriage shall be so dissolved: Provided that if at the time of exhibiting the said Bill such offending party or parties be dead, such provision as aforesaid shall not be inserted in the Bill.

In case of Divorce Bills report of previous proceedings to be laid before the House.

177. When any Petition for any Bill of Divorce has been presented to this House in any case in which any trial at nisi prius has been had, or any writ of inquiry executed within the United Kingdom, wherein the petitioner has been party, the judge or under sheriff before whom such trial has been had, or such writ of inquiry executed, shall transmit to the Clerk of the Parliaments, to be laid upon the Table of this House, a report of the proceedings upon such trial or writ of inquiry; and no such Bill of Divorce shall be read a second time until such report has been so laid upon the Table of this House.

Petitioner to attend on the Second Reading of the Bill.

178. Upon the Second Reading of any Bill of Divorce, the petitioner praying for the same shall attend this House, in order to his being examined at the Bar, if the House think fit, whether there has or has not been any collusion, directly or indirectly, on his part, relative to any act of adultery that may have been committed by his wife, or whether there be any collusion, directly or indirectly, between him and his wife, or any other person or persons, touching the said Bill of Divorce, or touching any proceedings or sentence of divorce had in any court for matrimonial causes at his suit, or touching any action at law which may have been brought by such petitioner against any person for criminal conversation with the petitioner's wife; and also whether, at the time of the adultery of which such petitioner complains, his wife was, by deed, or otherwise by his consent, living separate and apart from him, and released by him as far as in him lies from her conjugal duty, or whether she was at the time of such adultery cohabiting with him, and under the protection and authority of him as her husband.

TAXATION OF COSTS.

(So far as relates to Divorce Bills.)

Costs taxable by the Taxing Officer of the House of Lords, and Mode of Proceeding.

The Costs taxable by the Taxing Officer of the House of Lords are :—

All Costs, Charges, and Expenses, including the Expenses of Witnesses, of and incidental to the preparation, bringing in, and carrying through Parliament any Private Bill . . and the Costs, Charges, and Expenses incurred in opposing any such Bill, . . . Such Costs are taxed either under the Provisions of the 12 & 13 Vict., c. 78, and the 28 & 29 Vict., c. 27, *or upon a Requisition of . . any Court in England, Ireland, or Scotland, or in the discretion of the Taxing Officer at the request of the parties interested in the same.* Private Bills

The Mode of Proceeding.

When the Costs are to be taxed under the Provisions of 12 & 13 Vict., c. 78, a copy of such Costs with an Indorsement thereon stating that a copy of such Costs has been duly served upon A. and B., who are the Parties liable to pay the same, and requesting an appointment to tax, must be deposited in the Taxing Office of the House of Lords. Due notice of an appointment to tax will be sent from the Taxing Office to each party.

When Costs are to be taxed under the Provisions of 28 & 29 Vict., c. 27, a copy of such Costs (*with an endorsement thereon stating that the Provisions of Section 3 of the above Act, so far as the same relate to the Delivery of the Bill of Cost to the Party chargeable with the same, have been complied with, and requesting an appointment to examine and tax the same*), must be deposited in the Taxing Office; and such application must be made to the Taxing Officer within the time limited by the said Section of the said Act.

The Bills of Costs which are referred by either of the Courts are usually Exhibits in the Court by which they are referred, in which case there is endorsed on the back of the original Bill a requisition in the following words :—

The Master of the Rolls, Chief Clerk, Taxing Master of the Chancery Division of the High Court of Justice (or as the case may be) requests the Taxing Officer of the House of Lords to tax the within Bill of Costs, and to report to him the amount at which he has allowed the same.

(Signed) A. B.

Notice.

Any Parliamentary Agent, Attorney, Solicitor, or other Person applying for the Taxation of any Bill of Costs, Charges, and Expenses incurred by him in promoting or opposing any Private Bill, Provisional Order, or Provisional Certificate, in Parliament, is desired to deposit in the Office of the Taxing Officer, at the time of making such application, a Copy of such Bill of Costs, Charges, and Expenses, with the several items added up and the amount ascertained and set out, together with a Declaration signed by him stating that such Bill of Costs, Charges, and Expenses has been duly delivered to the parties charged therewith (naming the parties), in conformity with the Taxation of

Costs Acts, 1847 and 1849, or the Act for Awarding Costs, 1865, as the case may be.

A. H. ROBINSON,
Taxing Officer.

Taxing Office, House of Lords,
6th August, 1903.

NOTE.—The Taxing Office is open throughout the Session. and from the Second Monday in the month of November in each year.

Printed Lists of Charges for Parliamentary Agents, Attorneys, Solicitors, and others, prepared by the Clerk of the Parliaments, may be obtained at the Office for the Sale of Printed Papers, House of Lords.

SCHEDULE OF FEES TO BE CHARGED AT THE HOUSE OF LORDS.

(So far as they relate to Divorce Bills.)

PERSONAL BILLS.

	£	s.	d.
Notice or Order for consideration of Standing Order in order to its being dispensed with -	1	0	0
Order thereon -	1	0	0
Certificates of Examiners in case of any one Bill	5	0	0
Order referring Certificate to Standing Orders Committee - -	1	0	0
Standing Orders Committee thereon	5	0	0
Report of Standing Orders Committee	2	0	0
First Reading -	5	0	0
Notice of Second Reading	0	10	0
Second Reading - -	27	0	0
Every Petition in favour of or against a Bill not praying to be heard - -	1	0	0
,, praying to be heard against a Bill)			
,, in favour of a Bill and praying to be heard against alteration therein)	2	0	0
For the first or first and second days on which an Agent only appears in support of a Petition	3	0	0
For every subsequent day -	1	0	0
For the first day on which Counsel appear in support of a Petition -	10	0	0
For every subsequent day -	4	0	0
Order for attendance of witnesses, each witness	1	0	0
Every witness to whom an Oath or Affirmation is administered at the Bar of the House	1	0	0
Every witness to whom an Oath or Affirmation is administered before a Committee	0	2	0
Petition for additional provision	5	0	0
Certificate of Examiner thereon	5	0	0
Commitment of an Unopposed Bill - -	1	0	0
Order giving leave for Counsel to be heard before a Committee - -	1	0	0
For the first day on which Counsel appear in support of Bill - -	8	0	0
For every subsequent day -	4	0	0
Committee on any Personal Bill in division marked A.	2	0	0
Report, any other Bill, with Amendment	4	0	0
,, ,, without ,,	2	0	0
Report, Bill not to proceed	1	0	0

	£	s.	d.
Order on Report that Promoters do not intend to proceed further with Bill	1	0	0
Notice of Third Reading	0	10	0
THIRD READING :—			
Bill (H. L.) containing not more than 20 pages of print	10	0	0
,, containing more than 20 pages	15	0	0
Amendments on Third Reading - -	3	0	0
Producing before a Committee of the House of Commons any document or proof	1	0	0

GENERAL FEES.

Inspection of a Plan or other Document	0	5	0
Copy of Document, per folio of 72 words	0	0	6
The inspection fee to be charged in addition when the Document is two years old and upwards.			
Copies of Documents earlier than Geo. III. to be charged double the above fees.			
Copy certified by the Clerk of the Parliaments in addition to the above.	1	0	0

RULES TO BE OBSERVED BY OFFICERS OF THE HOUSE AND BY ALL PARLIAMENTARY AGENTS AND SOLICITORS ENGAGED IN PROSECUTING PROCEEDINGS IN THE HOUSE OF LORDS UPON ANY PETITION OR BILL.

1. *Declaration and Recognizance.*—No person shall be allowed to act as Parliamentary Agent until he shall have subscribed a declaration before one of the clerks in the Private Bill Office, engaging to observe and obey the rules, regulations, orders, and practice of the House of Lords, and also to pay and discharge, from time to time, when the same shall be demanded, all fees and charges due and payable upon any petition or Bill upon which such agent may appear; and after having subscribed such declaration and entered into a recognizance or bond (if hereafter required) in the penal sum of £500, with two sureties of £250 each, to observe the said declaration, such person, if in other respects qualified to act as hereinafter provided, shall be registered in a book to be kept in the Private Bill Office, and shall then be entitled to act as Parliamentary Agent; provided that upon the said declaration, recognizance, or bond and registry, no fee shall be payable.

[Rules 2-5 deal with the following topics :—Forms of declaration and bond; one member of a firm to sign for all, whose names must be inserted; no person to be registered until actually employed in promoting or opposing a private Bill or petition; where the applicant is not a solicitor a certificate of fitness to be required.]

5A. No person's name, other than that of an attorney or solicitor or writer to the signet, shall be printed on any private Bill as Parliamentary Agent for such Bill unless and until his name has been duly inscribed upon the Register of Parliamentary Agents.

[Rule 6 prohibits receiving of notices in Private Bill Office until the appearance as Parliamentary Agent has been entered, in which

appearance the name of the solicitor for the petition or Bill must be given.]

7. *Appearance to be entered on petitions against Bills.*—Before any person desiring to appear by a Parliamentary Agent shall be allowed to appear or be heard upon any petition against a Bill, an appearance to act as the Parliamentary Agent upon the same Bill shall be entered in the Private Bill Office, in which appearance shall also be specified the name of the solicitor and of the counsel who appear in support of any such petition (if any counsel or solicitor are then engaged), and a certificate of such appearance shall be delivered to the Parliamentary Agent, to be produced to the Committee clerk.

[This rule has apparently no application to appearance in defence on a Divorce Bill.]

The remaining rules deal with the following topics :—Change of solicitor or Parliamentary Agent; Parliamentary Agents and solicitors to be personally responsible for the observance of rules and payment of fees; prohibition to practice in cases of misconduct; registration of such; no written or printed statement to be circulated without name of agent; suspension of Standing Orders; Forms.

[Regulations of a like nature exist in the House of Commons.]

STANDING ORDERS OF THE HOUSE OF COMMONS.

Proceedings of Select Committee on Divorce Bills.

Committee Divorce Bills.

189. There shall be a Committee, to be designated "The Select Committee on Divorce Bills," to consist of *Nine* Members, who shall be nominated at the commencement of every Session, of whom *Three* shall be a Quorum.

Evidence to be given in Divorce Cases.

190. The Select Committee on Divorce Bills shall require evidence to be given before them that an action for damages has been brought in one of His Majesty's Courts of Record at *Westminster*, or in one of His Majesty's Courts of Record in *Dublin*, or in one of His Majesty's Supreme Courts of Judicature of the Presidencies of *Calcutta*, *Madras*, *Bombay*, or the Island of *Ceylon*, respectively, against the persons supposed to have been guilty of Adultery, and judgment for the Plaintiff had thereupon; or sufficient cause to be shown to the satisfaction of the said Committee why such action was not brought, or such judgment was not obtained.

Petitioner for Bill to attend Committee.

191. The Select Committee on Divorce Bills shall, in all cases in which the Petitioner for the Bill has attended the House of Lords upon the Second Reading of the Bill, require him to attend before them to answer any questions they may think fit that he should answer.

Committee to report Bill in all cases.

192. The Select Committee on Divorce Bills shall report every such Bill to the House, whether such Committee shall or shall not have agreed to the Preamble, or gone through the several Clauses, or any of them.

A TABLE OF THE FEES TO BE CHARGED AT THE HOUSE OF COMMONS.

(*As applicable to Divorce Bills.*)

Fees to be paid by the Promoters of a Private Bill.

	£	s.	d.
On the deposit of the Petition, Bill, Plan, or any other Document in the Private Bill Office -	5	0	0
For every day on which the Examiners shall inquire into the compliance with the Standing Orders	5	0	0

For Proceedings in the House.

On the presentation of the Bill	5	0	0
On the First Reading of the Bill	15	0	0
On the Second Reading of the Bill -	15	0	0
On the Report from the Committee on the Bill	15	0	0
On the Third Reading of the Bill -	15	0	0

Bills from the Lords, commonly called Estate Bills, Divorce Bills, Naturalisation Bills, and Name Bills, to be charged only one half of the preceding Fees.

For Proceedings before any Committee.

	£	s.	d.
For every day on which the Committee shall sit :—			
If the Promoters of the Bill appear by Counsel -	10	0	0
If they appear without Counsel	5	0	0

Fees to be paid on the Taxation of Costs on Private Bills.

	£	s.	d.
For every application or reference to "The Taxing Officer of the House of Commons," for the Taxation of a Bill of Costs -	1	0	0
For every £100 of any Bill which shall be allowed by the Taxing Officer -	1	0	0
On the deposit of every Memorial complaining of a Report of the Taxing Officer -	1	0	0
For every Certificate which shall be signed by The Speaker -	1	0	0
For Copies of any Documents in the office of the Taxing Officer, per folio of 72 words	0	1	0

That the same Fees be paid in case The Speaker shall refer to the Taxing Officer any Bill of Costs, under the authority of an Act of the sixth year of his late Majesty King George the Fourth, "To establish a Taxation of Costs on Private Bills in the House of Commons."

Fees to be taken by the Short Hand Writer.

	£	s.	d.
For every day he shall attend - -	2	2	0
For the transcript of his notes, per folio of 72 words	0	0	9

The preceding fees shall be charged, paid, and received at such times, in such manner, and under such regulations as The Speaker shall from time to time direct.

Fees to be paid by the Opponents of a Private Bill.

	£	s.	d.
On the deposit of every Memorial complaining that the Standing Orders have not been complied with -	1	0	0

	£	s.	d.
On the presentation or deposit of every Petition against a Private Bill	2	0	0

For Proceedings before the Examiners, or before any Committee.

	£	s.	d.
For every day on which the Examiners shall inquire into any Memorial complaining of a non-compliance with the Standing Orders -	3	0	0
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